

Appendix E

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

In re:	:	Chapter 11
	:	
	:	Case No. 11-16155 (HJB)
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , ¹	:	
	:	Jointly Administered
	:	
Debtors.	:	
	:	

DEBTORS' MOTION FOR AN ORDER (A) AUTHORIZING AND APPROVING BID PROCEDURES; (B) SCHEDULING A HEARING TO CONSIDER THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (C) PRESCRIBING THE MANNER AND NOTICE OF THE SALE HEARING; (D) AUTHORIZING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (E) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS; AND (F) GRANTING OTHER RELATED RELIEF

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE

Massachusetts Elephant & Castle Group, Inc., on behalf of itself and affiliated debtors and debtors in possession (collectively, the "Debtors"), hereby submits this motion for an order (a) authorizing and approving bidding procedures (the "Bid Procedures"); (b) scheduling a hearing (the "Sale Hearing") to consider the sale (the "Sale") of substantially all of the Debtors' assets² (the "Assets") to Original Joe's Acquisition Corporation (together with any designees, the "Stalking Horse Bidder") or another bidder submitting a higher or better offer at a proposed auction (the "Auction"); (c) prescribing the manner and notice of the Sale Hearing; (d)

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

² The assets to be sold consist of assets of each Debtor other than Repechage Investments Limited.

authorizing the sale of the Debtors' assets pursuant to that certain Asset Purchase Agreement between the Debtors and the Stalking Horse Bidder dated November 18, 2011 (the "APA") attached hereto as Exhibit A free and clear of all Liens (as that term is defined in the APA); (e) authorizing the assumption and assignment of Designated Contracts (as that term is defined in the APA); and (f) granting other related relief (the "Motion"). In support of the Motion, the Debtors respectfully represent as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are sections 105(a), 363 and 365 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 6004-1 and 6006-1 of the Local Rules for the United States Bankruptcy Court for the District of Massachusetts ("MLRB").

Background

2. On June 28, 2011 (the "Petition Date"), each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors' cases are being jointly administered.

3. The Debtors continue to operate their business and to manage their property as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. The Official Committee of Unsecured Creditors was appointed on July 12, 2011. No trustee or examiner has been requested or appointed in these cases.

5. The Debtors also commenced an ancillary proceeding (“Ancillary Proceeding”) under Part IV of the Companies’ Creditors Arrangement Act in the Ontario Superior Court of Justice (Commercial List). Debtor Massachusetts Elephant & Castle Group, Inc., the foreign representative for the Debtors in the Ancillary Proceeding, has sought and obtained recognition of the chapter 11 cases and certain orders entered in the cases. BDO Canada Limited is the court appointed Information Officer in the Ancillary Proceeding.

6. Debtor, Elephant and Castle Group, Inc. (“E&C” or the “Company”) operates and franchises authentic, full service British style restaurant pubs in the United States and Canada. Specifically, the Company, through its affiliate Debtors, has established nine debtor-owned locations and one franchised location in the United States³, in addition to nine company-owned locations and one franchised location in Canada.⁴ The Debtors’ headquarters and corporate offices are located in Boston, Massachusetts.

7. Additional information regarding the Debtors’ business, capital structure and the circumstances leading up to these chapter 11 cases is contained in the Declaration of Keith Radford in Support of First Day Motions and Declaration of David Dobbin in Support of First Day Motions (together, the “Declarations”) filed on June 28, 2011.

The Debtors’ Sales and Marketing Efforts

8. Prior to the bankruptcy cases, the Debtors retained Bellmark Partners LLC (“Bellmark”) as their investment bankers to assist the Debtors in their efforts to locate a new investor and/or market and sell substantially all of the Debtors’ assets as a going concern. Bellmark worked closely with the Debtors’ senior management and counsel to, among other

³ One Debtor (Elephant & Castle (Chicago) Corporation), has a subsidiary that has a joint venture interest in an entity that operates the Elephant & Castle Restaurant in San Francisco. Neither that subsidiary nor the joint venture are debtors.

⁴ Since the Petition Date, the franchised location in Canada has ceased operating.

things, (i) model the Debtors' restaurant rationalization and strategic turnaround plan, (ii) prepare historical and projected financials that would reflect the impact of management's strategic plan, (iii) prepare a confidential information memorandum (the "CIM") that would describe the strategic plan, historical operations and pro forma projections in more detail, and (iv) identify a list of financial investors who Bellmark, management and counsel reasonably believed would have the interest and ability to acquire the Debtors' business within the necessary time constraints.

9. On June 29, 2011, the Debtors filed the Motion of the Debtors for an Order Pursuant to Sections 105, 361, 362, and 363 of the Bankruptcy Code (A) Authorizing Use of Cash Collateral; (B) Granting Adequate Protection; (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001; and (D) Granting Related Relief (the "Cash Collateral Motion"). The Court has approved a series of Orders approving of the Debtors' use of cash collateral on an interim basis.

10. As part of this process, Bellmark contacted potential buyers. Bellmark provided any party interested in learning about this opportunity with a copy of the CIM after it executed a confidentiality agreement. In addition, Bellmark established an electronic data room (the "Data Room") containing due diligence materials for prospective purchasers/investors.

11. After continued negotiations with these potential purchasers and consideration of their indications of interest, as well as more definitive offers in the form of marked up asset purchase agreements, the Debtors determined, with the advice of Bellmark and their counsel, that the highest and best offer to date was the one submitted by the Stalking Horse Bidder, subject to higher or better offers and this Court's approval. On or about November 18, 2011, the Debtors executed the Asset Purchase Agreement.

12. As more fully described below, in consideration for agreeing to act as the Stalking Horse Bidder, the Stalking Horse Bidder insisted that the APA include certain bidding protections. In particular, subject to Court approval as part of the Bid Procedures Order, in the event that the Court approves the bid of a competing bidder, the Stalking Horse Bidder, if it is then not in default under the APA, will be entitled to receive a payment equal to the sum of 2% of the total cash purchase price plus an expense reimbursement of up to \$250,000 (the "Break-Up Fee and Expense Reimbursement").

13. In order to increase the opportunity for the Debtors to receive competitive bids, and to ensure that the Debtors' receive the maximum value for their assets, the Debtors will continue to engage in a full and robust marketing process with their financial advisor, Bellmark. The Debtors further believe that a public sale, as opposed to a private sale, will result in the most value for the Assets.

Summary of the Asset Purchase Agreement⁵

14. The pertinent terms of the APA are as follows:

- Purchase Price: The purchase price for the Assets to be paid in cash at the closing under the APA shall consist of \$22,750,000 less certain adjustments for Cure Contributions, Customer Credit Obligations and Tax Obligations (each as defined in the APA).
- Acquired Assets: The Stalking Horse Bidder shall acquire substantially all of the assets of the Debtors, excluding those of Repechage Investments Limited, along with the assumption and assignment of the Debtors' real property leases for each of its restaurant locations.

⁵ The summary of the APA is for descriptive purposes only. To the extent that there are any discrepancies between this summary and the APA, the APA shall control.

- Excluded Assets: The Acquired Assets do not include any of the following (the "Excluded Assets"): (a) any accounts receivables, notes receivables, charge card receivables or other receivables, (b) any funds deposited in bank accounts and all other cash or cash equivalents, except for any change funds that will remain at the Purchased Locations as stated herein, (c) all sales tax, utility and other deposits (other than deposits under the Leases), (d) any money due to Debtors with respect to any retirement or 401(k) program and all other rights related to Debtors' employee benefit plans, (e) stock or other equity rights or interests in any company, other than the shares of capital stock or other equity interest of Elephant & Castle (Chicago) Corporation, as a Debtor hereunder, in E&C San Francisco, LLC and its 1/3 equity interest in BC Restaurants, LLC, which operates the Elephant & Castle Restaurant in San Francisco, (f) insurance policies or cash value of any insurance policy, (g) any monies or refunds due from vendors, (h) any monies due Debtors under any co-op arrangement with vendors, (i) any monies due with respect to coupons, (j) any claims or causes of action, including, but not limited to, any and all claims and causes of action arising under sections 544, 545, 547, 548, 549, and 553(b) of the Bankruptcy Code or under comparable state law provisions, (k) the rejected leases, and the contracts other than the Assigned Contracts, and (l) all minute books, stock ledgers, corporate seals and stock certificates of the Debtors.

- Assumed Obligations: The Stalking Horse Bidder will assume no liability for the Debtors' debts or expenses of any kind incurred prior to closing under the APA except for the executory obligations and liabilities of Debtors arising out of or relating to the terms of the Assigned Leases and the Assigned Contracts, as well as the Cure Obligations assumed and payable by the Stalking Horse Bidder under the APA, and

Debtors' Customer Credit Obligations.

- Excluded Liabilities: Except for the Assumed Obligations the Stalking Horse Bidder will not assume any liabilities or obligations of the Debtors.
- Contracts: Stalking Horse Bidder shall have the right to direct Debtors to assume and assign to Stalking Horse Bidder at Closing certain of the contracts (which may include, without limitation, the franchise agreements) as indicated in writing by Stalking Horse Bidder to Debtors on or before 5:00 p.m. Eastern time on the date that is two (2) business days prior to the Closing Date. For any contract that Stalking Horse Bidder does not give written notice of acceptance with respect thereto on or before such time and date, Debtors shall file a motion to reject such contracts, such that they are not assigned to or assumed by the Stalking Horse Bidder at Closing
- Closing: The closing of the transaction contemplated hereby will take place on the second business day following the later of (a) entry of the Sale Approval Order, which is not stayed pending an appeal (the "Closing" or "Closing Date"), or (b) satisfaction of all of the conditions set forth in the APA, but in no event later than January ___, 2012.
- Termination Rights: The APA may be terminated as follow:
 - (a) Mutual Agreement. By written agreement of Debtors and the Stalking Horse Bidder at any time.
 - (b) Outside Date. By Stalking Horse Bidder, if the Closing shall not have occurred on or prior to January ___, 2012, or such other date as mutually agreed upon by the parties, for any reason other than Stalking Horse Bidder's breach of this Agreement.

(c) Breach; Non-Satisfaction of Conditions Precedent. Any time before the Closing, by Debtors or Stalking Horse Bidder: in the event of a material breach hereof by any non-terminating party if such non-terminating party fails to cure such breach within three (3) business days following notification thereof by the terminating party; or upon notification to the non-terminating party by the terminating party that the satisfaction of any condition to the terminating party's obligations under this Agreement becomes impossible or impracticable with the use of commercially reasonable efforts if the failure of such condition to be satisfied is not caused by a breach hereof by the terminating party.

(d) Third Party Successful Bidder. In the event that Stalking Horse Bidder is not the successful bidder at the Auction, then this Agreement shall terminate upon the closing with such successful bidder.

- Indemnification: Debtors agree to jointly and severally indemnify and hold harmless Stalking Horse Bidder, its successors and assigns, its managers, members, and employees, from and after the Closing, against all Indemnity Losses (as defined in the APA) arising with respect to the following events: (a) the breach by Debtors of any of their representations and warranties under the APA; (b) the failure by Debtors to perform any of their covenants under the APA which are not cured within two business days after written notice; (c) any third party claim asserted against Stalking Horse Bidder with respect to actions, occurrences, or omissions of Debtors occurring prior to Closing, including, but not limited to, liabilities and obligations in connection with Debtors' employees, employee benefit plans, taxes and environmental laws of any kind, except to the extent that that the same relate to any Assumed Obligations; and (d) any liability or

obligation which relates to or arises out of or results from the Excluded Liabilities.

Debtors' liability shall be limited to the amount of the Purchase Price. Further, Debtors shall not have any liabilities unless Stalking Horse Bidder notifies Debtors in writing on or before sixty (60) days after Closing of any indemnity claim. Stalking Horse Bidder shall not be entitled to obtain indemnity to the extent it would require the Debtors to use funds reserved for payment by the Debtors' bankruptcy estate on account of claims filed by secured lenders, creditors asserting claims under Section 503(b)(9), PACA, cure amounts due to landlords under assumed leases, prepetition taxes (including any amounts paid to Escrow Agent for payment of Tax Obligations), allowed professional fees and any amounts determined to be necessary as administrative expenses for the conclusion of the case.

- Conditions to Closing: The obligation of Stalking Horse Bidder to consummate the transactions contemplated in the APA is subject to the satisfaction, at or before the Closing, of each of the following conditions:

- (a) The representations and warranties of Debtors contained in the APA shall be true, correct and complete in all material respects (except for such representations and warranties which are qualified by their terms by a reference to materiality, which representations and warranties as so qualified will be true in all respects) on and as of the Closing Date with the same force and effect as though made on the Closing Date.

- (b) Debtors shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Debtors on or prior to the Closing Date.

(c) Excluding any objections to the entry of the Sale Approval Order, no action, proceeding or investigation (including, without limitation, actions, proceedings or investigations commenced or threatened by a governmental authority) has been commenced or threatened to prevent, or seek damages as a result of, the execution and delivery of the APA or the consummation of any of the transactions contemplated herein (unless such action, proceeding or investigation has been dismissed or otherwise disposed of at least seven days prior to the Closing Date).

(d) Sale Approval Motion. Debtors shall have filed a motion or motions for approval under Section 363 of the Bankruptcy Code of (a) the sale of the Acquired Assets, assumption and assignment of the Assigned Leases and Assigned Contracts and assumption of the Assumed Obligations pursuant to the terms of this Agreement and the transactions hereunder and (b) the form of the APA.

(e) Sale Approval Order. The Bankruptcy Court shall have entered the Sale Approval Order in a form acceptable to Stalking Horse Bidder which approves the Sale Approval Motion and which (a) approves the sale of the Acquired Assets to Stalking Horse Bidder on the terms and conditions set forth in the APA pursuant to Section 363(f) of the Bankruptcy Code and authorizes Debtors to proceed with this transaction, (b) includes a specific finding that Stalking Horse Bidder is a good faith purchaser (pursuant to Section 363(m) of the Bankruptcy Code) of the Acquired Assets, (c) states that the sale of the Acquired Assets to Purchaser shall be free and clear of all liens, claims, interests and encumbrances whatsoever (except for the Assumed Obligations), (d) approves Debtors' assumption and assignment of the Assigned Leases and Assigned Contracts pursuant to Section 365 of the Bankruptcy Code, and (e) contains a finding and

conclusion that Stalking Horse Bidder shall not be a successor to Debtors or any other person or entity for any purpose.

15. The APA is subject to approval by this Court.

Relief Requested

16. By this Motion, the Debtors seek entry of the following Orders:

A. Order (I) Approving Bidding Procedures for the Sale of Assets Free and Clear of all Liens, Claims, Interests and Encumbrances Pursuant to Section 363 of the Bankruptcy Code, (II) Approving Certain Bidding Protections, (III) Approving the Form and Manner of Notice of the Sale and Assumption and Assignment of Executory Contracts and Unexpired Lease and (IV) Scheduling an Auction and Sale Hearing (the "Bid Procedures Order") in the form attached hereto as Exhibit B; and

B. Order (A) Approving an Asset Purchase Agreement Between the Debtors and the Successful Bidder, (B) Authorizing the Sale of Assets of the Debtors Free and Clear of all Liens, Claims, Encumbrances, and Interests, and (C) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Lease In Connection Therewith (the "Sale Order") in the form attached hereto as Exhibit C.

I. The Proposed Bid Procedures

17. The Debtors believe that the proposed Bid Procedures are fair and reasonable, designed to provide an appropriate framework for selling the Assets and enable the Debtors to review, analyze, and compare all bids received to determine which bid is in the best interests of the Debtors' estates and creditors, and are not likely to dissuade any serious potential bidder from bidding for the Assets.

A. Participation Requirements

18. To participate in the bidding process, each person or entity will be required to deliver (unless previously delivered) to the Debtors, on or before the Bid Deadline (as defined below), a signed confidentiality agreement in form and substance satisfactory to the Debtors (the "Confidentiality Agreement") and upon request of the Debtors, a financial statement or other indicia of financial ability reasonably satisfactory to the Debtors (the "Financials"). Each person

or entity that delivers the Confidentiality Agreement to the Debtors, or upon request of the Debtors the Financials, on or before the Bid Deadline is hereinafter referred to as a "Prospective Bidder." After a Prospective Bidder delivers the Confidentiality Agreement, the Debtors will deliver or make available (unless previously delivered or made available) to each Prospective Bidder certain designated information and financial data with respect to the Assets. Neither the Debtors nor their representatives will be obligated to furnish any information of any kind whatsoever relating to the Assets to any person who is not a Prospective Bidder.

B. Bid Deadline

19. The Debtors request that the Court establish a deadline for the submission of bids (the "Bid Deadline"). On or before the Bid Deadline, a Prospective Bidder that desires to make a bid (a "Competing Offer") is required to deliver written copies of its Competing Offer by facsimile and email to the representatives of the Debtors, the Official Committee of Unsecured Creditors formed in these cases (the "Committee") and GE Canada Equipment Financing, G.P. (the "Secured Lender").

C. Bid Requirements

20. To be considered, all Competing Offers must:

- a) exceed the sum of (i) the cash portion of the Purchase Price set forth in APA, plus (ii) the Break-Up Fee and Expense Reimbursement;
- b) be accompanied by a signed asset purchase agreement in the form of the APA, together with a marked copy showing all changes to the APA, which changes shall not be less favorable to the Debtors and their estates;
- c) not be subject to, or conditioned on, any contingency or condition, including without limitation, the outcome of unperformed due diligence by the bidder or upon any financing contingency;
- d) be irrevocable until the earlier to occur of (i) the Closing Date, or (ii) for sixty (60) days following entry of the Sale Order;

e) be submitted with a cash deposit equal to 10% of the purchase price offered in the Competing Offer (the "Deposit") in the form of a wire transfer or a certified check made payable to the Debtors and sent to the Debtors' counsel, which Deposit shall be non-refundable if the Court approves the sale of the Debtors' assets to such Prospective Bidder;

f) be substantially on the same or better terms and conditions as set forth in the APA; and

g) be submitted with evidence substantially equivalent to that provided by the Stalking Horse Bidder establishing to the satisfaction of the Debtors, in consultation with the Committee and Secured Lender, that such Prospective Bidder or an entity that has executed a written guarantee of such Prospective Bidder's bid has readily available funds sufficient to enable it to timely consummate its Competing Offer and provide all non-debtor parties to those executory contracts and unexpired leases to be assumed and assigned with adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code.

21. Competing Offers that the Debtors, in consultation with the Committee and Secured Lender, determine satisfy the provisions set forth above shall be deemed "Qualified Bids" and any party submitting such Qualified Bid shall be designated as a "Qualified Bidder." A Qualified Bid will be valued by the Debtors based upon any and all factors that the Debtors deem pertinent, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating a transaction with the Qualified Bidder, (c) any excluded assets or executory contracts or unexpired leases, and (d) any other factors that the Debtors may deem relevant to the Sale in consultation with the Committee and Secured Lender.

D. Auction

22. In the event that one or more Qualified Bid has been received, the Debtors will conduct the Auction for the sale of the Assets. The Debtors propose that the Auction take place before the Honorable Henry J Boroff in the United States Bankruptcy Court, United States Courthouse, 300 State Street, Springfield, MA 01105. At the Auction, bidding will commence at the amount of the aggregate consideration for the Assets and on the terms proposed in the

Qualified Bid that the Debtors select as the highest and best offer prior to the Auction. Bidding will continue until such time as the highest and best offer is determined by the Debtors in consultation with the Committee and Secured Lender (the "Successful Bid," and the party submitting such Successful Bid being designated the "Successful Bidder").

23. The Debtors, after consultation with the Committee and Secured Lender, may announce at the Auction additional rules or procedures for conducting the Auction. The Debtors reserve the right, after consultation with the Committee and Secured Lender, to (i) determine, at their discretion, which bid, if any, is the highest and best offer, taking into consideration, *inter alia*, that the Break-Up Fee and Expense Reimbursement would be payable if a party other than the Stalking Horse Bidder is the Purchaser, (ii) reject any bid that the Debtors deem to be inadequate, insufficient or otherwise unsatisfactory, and/or (iii) adjourn the Auction by announcing such adjournment at the Auction. The Debtors' presentation to this Court for approval of the selected bid as the Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Court at the Sale Hearing.

24. All bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Court and waived any right to jury trial in connection with any disputes relating to the Auction, the sale of the Assets and the construction and enforcement of the APA.

E. Closing with Successful Bidder or Alternate Bidder

25. If, for any reason, the Successful Bidder fails to close on the purchase of the Assets (and assuming the conditions to closing have been satisfied), then: (i) the Successful Bidder shall forfeit the Deposit and be subject to such other rights and remedies as the Debtors may have for such failure; (ii) the Qualified Bidder who, as of the conclusion of the Auction, has

made the next highest and best bid (as determined by the Debtors in consultation with the Committee and Secured Lender) automatically will be deemed to have submitted the Successful Bid without further order of the Court (such bidder, the "Alternate Bidder"); and (iii) the Alternate Bidder will be required to proceed as the purchaser at closing.

II. Proposed Stalking Horse Bid Protections

26. As part of the Bid Procedures Order, the Debtors are requesting approval of the provisions of the APA regarding the Break-Up Fee and Expense Reimbursement, on the terms and conditions set forth in the APA. The Debtors submit that the proposed Break-Up Fee and Expense Reimbursement is a necessary inducement for the Stalking Horse Bidder to submit its bid subject to higher and better offers and is a necessary condition to closing the Sale.

III. Proposed Sale Objection Deadline and Sale Hearing

27. The Debtors propose that the Court establish a deadline to file and serve objections to the Sale (the "Objection Deadline") and date for the Sale Hearing, at which the Court will consider whether to approve the APA or such other agreement between the Debtors and the Successful Bidder, authorize the Sale of the Assets free and clear of all liens, claims, interests and encumbrances, and authorize the assumption and assignment of executory contracts and unexpired leases in connection with the Sale. However, in the event the Debtors propose to sell the Assets to a Purchaser other than the Stalking Horse Bidder, objections to the Sale may be raised at the Sale Hearing.

28. The Debtors propose that any objections to the Sale must be in writing, set forth with particularity the grounds for such objection, be filed with the Court, and be served upon (a) counsel to the Debtors, (i) Eckert Seamans Cherin & Mellott, Two International Place, 16th Floor, Boston, MA 02110-2602 (Attn: John G. Loughnane, Esq.), (b) counsel to the Committee,

Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Christine D. Lynch, Esq.); (c) counsel to the Secured Lender, Latham & Watkins, Wacker Drive Suite 5800, Chicago, Illinois 60606 (Attn: Richard Levy, Esq.) and McCarthy Terault, LLP; Suite 3000 421 7th Avenue SW, Calgary AB T2P 4K9 (Attn: Sean Collins, Esq.); (d) counsel to the Stalking Horse Bidder, Rothberger, Johnson & Lyons, LLP, One Tabor Center, Suite 3000, 1200 Seventeenth Street, Denver, Colorado 80202 (Attn: Brent R. Cohen) and Brown Rudnick, LLP, One Financial Center, Boston, MA 02111 (Attn: Jeffrey Jones); and (e) the Office of the United States Trustee for the District of Massachusetts, John W. McCormack Post Office and Courthouse 5 Post Office Square, Suite 1000, Boston, MA 02109 (Attn: Jennifer L. Hertz, Esq.) (the "Interested Parties") so as to be actually received on or before the Objection Deadline.

IV. Notice of the Bid Procedures, the Auction, and the Sale Hearing

29. Upon entry of the Bid Procedures Order, the Debtors will serve within two business days copies of the Bid Procedures Order upon: (a) the Office of the United States Trustee for the District of Massachusetts; (b) counsel to the Stalking Horse Bidder; (c) counsel for the Committee; (d) all known secured lenders and their counsel; (e) all known lien-holders and their counsel; (f) all known federal and state taxing authorities which have a reasonably known interest in the relief requested in this Motion; (g) all attorneys who have entered their appearance in these cases; and (h) and any party that has previously expressed an interest in the Assets.

30. The Debtors propose to further serve on these same parties the notice of the Sale pursuant MLBR 6004-1(d)(1)(B) via a Notice of Intended Public Sale of Estate Property ("Sale Notice") substantially similar to MLBR Official Local Form 2B. The proposed Sale Notice is attached as Attachment 2 to the proposed form of Bid Procedures Order (attached hereto as Exhibit B).

31. The Debtors submit that the methods of notice described herein comply fully with Bankruptcy Rule 2002, Bankruptcy Rule 6004 and MLBR 6004-1 and constitute good and adequate notice of the proposed Bid Procedures and the sale of the Assets. Therefore, the Debtors respectfully request that this Court approve the notice procedures proposed above.

V. Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases

32. In connection with the Sale, the Debtors will be required to assume and assign the Designated Contracts. Accordingly, the Debtors, seek approval of the Assumption and Assignment Notice, in substantially the form attached hereto as Attachment 3 to the form of Bid Procedures Order (attached hereto as Exhibit B).

33. To provide counterparties to the potential Designated Contracts appropriate notice of the requested relief, upon entry of the Bid Procedures Order, the Debtors will file a schedule of cure obligations (the "Cure Schedule") for all potential Designated Contracts being assumed and assigned to the Purchaser. The Cure Schedule will include a description of each Designated Contract and the amount, if any, the Debtors believe is necessary to cure any defaults under such agreements pursuant to section 365 of the Bankruptcy Code (the "Cure Costs"). A copy of the Cure Schedule, together with the Assumption and Assignment Notice, will be served on each of the non-debtor parties listed on the Cure Schedule.

34. The Assumption and Assignment Notice will provide, among other things, that information concerning the Purchaser's ability to perform under the Designated Contracts as contemplated by section 365(f)(2)(B) of the Bankruptcy Code (the "Adequate Assurance Information") will be provided as soon as practicable upon reasonable request in writing to the undersigned counsel to the Debtors and upon the execution of a mutually acceptable confidentiality agreement. In the event that the Debtors propose to sell the Assets to a Purchaser

who is not the Stalking Horse Bidder, the Adequate Assurance Information will be made available as soon as practicable after the conclusion of the Auction.

35. The Debtors propose that any objections to the assumption and assignment of any executory contract or unexpired lease identified on the Cure Schedule, including, but not limited to, objections relating to adequate assurance of future performance or to the Cure Costs set forth on the Cure Schedule, must be in writing, filed with the Court, and served upon the Interested Parties so as to be actually received on or before the Objection Deadline; provided, however, in the event the Debtors propose to sell the Assets to a Purchaser other than the Stalking Horse Bidder, objections to the assignment of the Designated Contracts to such Purchaser on the basis of adequate assurance of future performance only may be raised at the Sale Hearing.

36. Any objections shall set forth with particularity the grounds for such objection or other statements of position, including, if applicable, the specific monetary amount the objector asserts to be due, and the specific types and dates of alleged defaults, pecuniary losses, the specific adequate assurance of future performance that the Purchaser or Debtors have not provided and other conditions to assignment and support there for.

37. If no objections are timely received, then the Cure Costs set forth in the Cure Schedule will be binding upon the counterparties to the Designated Contracts for all purposes in these chapter 11 cases and will constitute a final determination of the total Cure Costs required to be paid by the Debtors in connection with the assumption and assignment of the Designated Contracts. In addition, all counterparties to the Designated Contracts will (a) be forever barred from asserting any additional cure or other amounts with respect to the Designated Contracts, and the Debtors and the Purchaser will be entitled to rely solely upon the Cure Costs set forth in the Cure Schedule; (b) be deemed to have consented to the assumption and assignment; and (c)

be forever barred and estopped from asserting or claiming against the Debtors or the Purchaser that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Designated Contracts, or that there is any objection or defense to the assumption and assignment of such Designated Contracts.

38. Where a counterparty to an Designated Contract files an objection to the proposed assumption and assignment including asserting a cure cost higher than the proposed Cure Costs, then to the extent that the parties are unable to consensually resolve the objection, such objection will be heard at the Sale Hearing. The Debtors intend to cooperate with counterparties to Designated Contracts to attempt to reconcile any differences in a particular cure cost.

Applicable Authority

I. The Asset Sale is Within the Debtor's Sound Business Judgment

39. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor in possession is given these rights by section 1107(a) of the Bankruptcy Code. See 11 U.S.C. § 1107(a). Moreover, section 105(a) of the Bankruptcy Code provides that bankruptcy courts "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

40. A sale of a debtor's assets should be authorized pursuant to Bankruptcy Code section 363 if a sound business purpose exists for doing so. In re Aerovox, Inc., 269 B.R. 74, 80 (Bankr. D. Mass. 2001); see also In re Martin, 91 F.3d 389, 395 (3d Cir. 1996); In re Lionel Corp., 722 F.2d 1063, 1071-72 (2d Cir. 1983).

41. As this Court has noted, a debtor's business decision should be approved by the

court unless it is shown to be so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, or whim or caprice. In re Aerovox, Inc., 269 B.R. at 80 (citing In re Logical Software, 66 B.R. 683, 686 (Bankr. D. Mass. 1986)). A debtor in possession or a trustee is often obliged to make difficult business decisions that may later be open to serious criticism by obstreperous creditors. DiStefano v. Stern (In re J.F.D. Enterprises, Inc.), 223 B.R. 610, 625 (Bankr. D. Mass. 1998). Nevertheless, such decisions are entitled to "great judicial deference." DiStefano v. Stern (In re J.F.D. Enterprises, Inc.), 215 F.3d 1312, 2000 WL 560189, at *5 (1st Cir. 2000) (quoting In re WPRV-TV, Inc., 143 B.R. 315, 319 (D.P.R. 1991), vacated on other grounds, 165 B.R. 1 (D.P.R. 1992)); see also In re Thinking Machs. Corp., 182 B.R. 365, 368 (D. Mass. 1995) (emphasizing "the high degree of deference usually afforded purely economic decisions of trustees"), rev'd on other grounds, 67 F.3d 1021 (1st Cir. 1995). In considering approval of a debtor's business decision, the court does not act as an arbiter of disputes between creditors and the estate but as an "overseer of the wisdom with which the bankruptcy estate's property is being managed by the trustee or debtor-in-possession." In re Aerovox, Inc., 269 B.R. at 80 (quoting In re Orion Pictures Corp., 4 F.3d 1095, 1099 (2d Cir. 1993)).

42. Courts have applied various factors in determining whether a sound business justification exists, including: (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) whether adequate and reasonable notice is provided. See Fulton State Bank v. Schipper (In re Schipper), 933 F.2d. 513, 515 (7th Cir. 1991); see also In re Lionel Corp., 722 F.2d at 1071 (setting forth the "sound

business purpose" test); accord In re Montgomery Ward Holding Corp., 242 B.R. 147, 153-54 (D. Del. 1999).

43. The proposed Sale pursuant to the APA (as may be modified at the Auction) is supported by sound business justifications. The Debtors firmly believe that creditors will receive more value through a prompt sale of the Assets than through continued operations or piecemeal liquidation of the Debtors and that a prompt sale is necessary to maximize the value of the Assets for the estates.

II. The Stalking Horse Protections are Warranted

44. Bidding incentives such as a break-up fee encourage a potential purchaser to invest the requisite time, money, and effort to negotiate with a trustee and perform the necessary due diligence attendant to the acquisition of a debtor's assets, despite the inherent risks and uncertainties of the Chapter 7 process. Historically, bankruptcy courts have approved bidding incentives similar to the Break-Up Fee under the business judgment rule, which prescribes against judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. See e.g., In re 995 Fifth Avenue Assocs. L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1992) (bidding incentives "may be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking.") (citation omitted); Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 657 (S.D.N.Y. 1992).

45. Another method for evaluating the appropriate of bidding procedures was established in Calpine Corporation v. O'Brien, Environmental Energy, Inc., 181 F.3d 527 (3d Cir. 1999). In O'Brien, the Third Circuit concluded that "the determination whether break-up fees or expenses are allowable under § 503(b) must be made in reference to general

administrative expense jurisprudence. In other words, [the inquiry] depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate." O'Brien, 181 F.3d at 535. That same standard was recently reiterated in the Third Circuit's decision in In re Reliant Energy Channelview LP, 594 F.3d 200 (3d Cir. 2010) ("Under O'Brien, we must decide whether an award of a break-up fee was necessary to preserve the value of the Debtors' estate.").

46. The Break-Up Fee and Expense Reimbursement satisfy both the business judgment rule and the *O'Brien* court's more restrictive administrative standard. First, all negotiations between the Debtors and the Stalking Horse Bidder have been conducted in good faith and at arm's length. Second, the Debtors have determined that the Break-Up Fee and Expense Reimbursement is necessary to attract and retain the Stalking Horse Bidder. The Debtors' ability to continue to seek a higher or better offer without the risk of losing the Debtors' current highest and best offer (following a robust marketing effort) will be eliminated if the Debtors cannot secure approval of the Break-Up Fee and Expense Reimbursement. Further, payment of the Break-Up Fee and Expense Reimbursement will not diminish the Debtors' estates. The Debtors will incur the Break-Up Fee and Expense Reimbursement only if an Competing Offer is consummated after the Auction.

47. The Debtors submit that authorization of the Break-Up Fee and Expense Reimbursement will not chill any bidding for the Assets. By ensuring the existence of a "floor" purchase price under the APA, the Break-Up Fee and Expense Reimbursement will induce bids that potentially may have never been made and without which bidding may be limited. The Debtors' ability to provide the Break-Up Fee and Expense Reimbursement enables them to

ensure a sale to a bidder at a price they believe to be fair, while providing the Debtors with the potential of even greater benefit to the estates.

III. The Sale of the Assets Free and Clear of Liens and Other Interests Is Authorized By Section 363(f)

48. The Debtors further submit that it is appropriate to sell the Assets free and clear of the Liens pursuant to section 363(f) of the Bankruptcy Code, with any such Liens attaching to the net sale proceeds of the Assets to the extent applicable. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of Liens if:

- 1) applicable nonbankruptcy law permits sale of such property free and clear of such interests;
- 2) such entity consents;
- 3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- 4) such interest is in bona fide dispute; or
- 5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(1). This provision is supplemented by section 105(a) of the Bankruptcy Code, 11 U. S.C. § 105(a).

49. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets "free and clear" of Liens. In re Dundee Equity Corp., 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. March 6, 1992) ("Section 363(1) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met"); In re Bygaph. Inc., 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same); Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive, and holding

that the court may approve the sale "free and clear" provided at least one of the subsections of Bankruptcy Code section 363(f) is met).

50. The Debtors believe that one or more of the tests of section 363(f) are satisfied with respect to the transfer of the Assets pursuant to the APA. In particular, the Debtors believe that at least section 363(f)(2) will be met in connection with the transactions proposed under the APA because each of the parties holding Liens against the Assets will consent, or absent any objection to this Motion, will be deemed to have consented to, the Sale. Any lien holder also will be adequately protected by having their Liens, if any, in each instance against the Debtors or their estates, attach to the cash proceeds of the Sale ultimately attributable to the Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force, and effect that such creditor had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto. Accordingly, section 363(f) authorizes the transfer and conveyance of the Assets free and clear of any such Liens.

51. Under the terms of the APA, the Purchaser will assume and agree to pay, to perform, and to discharge as and when they become due and payable, or are required to be performed, all liabilities which are to be performed on and after consummation of the APA. The Purchaser is not liable for any of the Debtors' liabilities in connection with the sale of the Assets as a successor to the Debtors' business or otherwise. Extensive case law exists providing that claims against the winning bidder are directed to the proceeds of a free and clear sale of property and may not be asserted against a buyer subsequently. See, e.g., The Ninth Ave. Remedial Group v. Allis-Chalmers Corp., 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996); MacArthur Company v. Johns-Manville Corp. (In re Johns-Manville Corp.), 837 F.2d 89, 93094 (2d Cir. 1988); In re Hoffman, 53 B.R. 874, 876 (Bankr. D.R.I. 1985).

IV. The Purchaser is a Good Faith Purchaser

52. The Debtors request that the Court find that the Purchaser is entitled to the full protections of section 363(m) of the Bankruptcy Code. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's interest in property purchased from a debtor in the event that the sale conducted under section 363(b) is reversed or modified on appeal. Section 363(m) of the Bankruptcy Code "fosters the policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely." In re Chateaugay Corp., 1993 U.S. Dist. LEXIS 6130, *9 (S.D.N.Y. May 10, 1993).

53. The Debtors have presented the proposed Sale in good faith. The Stalking Horse Bidder's identity has been, and the identity of any Successful Bidder will be, fully disclosed to the Court and parties in interest. Furthermore, the Debtors will be prepared to introduce evidence at the Sale Hearing regarding the arm's-length, good faith nature of the marketing and bidding process, the Auction and the negotiation of the asset purchase agreement with the Purchaser.

V. The Assumption and Assignment of the Assumed Contracts and Leases Should be Authorized

54. As required by the APA, the Debtors also seek by this Motion authority to assume and assign the Designated Contracts to the Purchaser. The Debtors have made the business decision to sell substantially all of the Debtors' assets pursuant to the APA. The Debtors are party to various executory contracts and unexpired leases that are necessary to the operation of their businesses. The assumption and assignment of the Designated Contracts is therefore an integral term of the APA. If the Debtors are not able to assume and assign the Designated

Contracts, the Sale of the Assets will likely be impaired resulting in reduced proceeds for the benefit of the estates.

55. Section 365(f)(2) of the Bankruptcy Code provides in pertinent part:

The trustee may assign an executory contract or unexpired lease of the debtor only if —

- (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
- (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(0)(2).

56. Section 365(b)(1) of the Bankruptcy Code then codifies the requirements for assuming an unexpired lease or executory contract of a debtor. This subsection provides:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee —

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default ... ;
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

57. The Debtors submit that there are no incurable defaults under any of the Designated Contracts. To the extent Cure Costs are due, any such Cure Costs will be paid by the Debtors as part of any assumption and assignment.

58. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." EBG

Midtown South Corp. v. McLaren/Hart Env. Eng'g Corp. (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 593 (S.D.N.Y. 1992); In re Prime Motor Inns Inc., 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) ("[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance"); Carlisle Homes, Inc v Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

59. Among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. See, e.g., In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

60. The adequate assurance information that the Debtors anticipate providing may include: (a) the name of the Purchaser; (b) information about the Purchaser's financial condition, such as federal tax returns, a current financial statement, or bank account statements; (c) a description of the intended use of the premises, if applicable, and (d) such additional information regarding the Purchaser as the Debtors may elect to include. This information will provide the Court and other interested parties with the opportunity to evaluate and, if necessary, challenge the ability of the Purchaser to provide adequate assurance of future performance under such agreements, as required under section 365 of the Bankruptcy Code. The Court should therefore authorize the Debtors to assume and assign the Designated Contracts.

VI. Relief Under Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate

61. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property ... is stayed until the expiration of 14 days after entry of the order, unless the

court orders otherwise." Additionally, Bankruptcy Rule 6006(d) provides that an "order authorizing the trustee to assign an executory contract or unexpired lease ..is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." The Debtors request that any order approving the APA be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

62. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the stay period, a noted treatise suggests that the stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the procedure." Alan J. Resnick & Henry J. Sommers, 10 Collier On Bankruptcy ¶ 6004.11 (16th ed. 2011). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id.

63. The Debtors hereby request that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

Notice

64. The Debtors have provided notice of this Motion by to: (a) the Office of the United States Trustee for the District of Massachusetts; (b) counsel for the Committee; (c) all known secured lenders; (d) all known lien-holders and their counsel; (e) all attorneys who have entered their appearance in these cases; (f) all parties specifically referenced in Section 8.3(k) of the APA; and (g) all taxing authorities both U.S. and Canadian. MLBR 6004-1(b). The Debtors respectfully submit that no further notice of this Sale is required.

No Prior Request

65. No prior request for relief sought herein has been made by the Debtors to this or any other Court.

WHEREFORE, the Debtors respectfully request that this Court enter the Bid Procedures Order and Sale Order, in substantially the forms attached hereto, and granting the relief requested herein and such other and further relief as the Court deems just.

Dated: November 18, 2011

ECKERT, SEAMANS, CHERIN &
MELLOTT, LLC

/s/ John G. Loughnane
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COUNSEL TO THE DEBTORS

Appendix F

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re: : Chapter 11
: :
Massachusetts Elephant & Castle : :
Group, Inc., et al.¹ : : Case No. 11-16155
: :
Debtors : : Jointly Administered

INTERIM ORDER (A) AUTHORIZING USE OF CASH COLLATERAL; (B) GRANTING ADEQUATE PROTECTION; (C) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001; AND (D) GRANTING RELATED RELIEF

This matter having come before the Court on the Motion of the Debtors for an Order Pursuant to Sections 105, 362, 362, and 363 of Bankruptcy Code (A) Authorizing Use of Collateral; (B) Granting Adequate Protection; (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001; and (D) Granting Related Relief (the "Motion") filed by Massachusetts Elephant & Castle Group, Inc. on behalf of itself and affiliated debtors and debtors in possession (collectively the "Debtors"); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and notice of the Motion and the hearing being and sufficient notice under the circumstances; and it appearing from the record before the Court that sufficient cause exists for the entry of this order; the Court **FINDS AS FOLLOWS:**²

A. On June 28, 2011 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the

¹ The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

United States Bankruptcy Court for the District of Massachusetts (the "Court"). A Motion for Joint Administration was simultaneously filed therewith.

B. The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No official committee of unsecured creditors has been appointed in these cases.

C. This matter is a core proceeding pursuant to 28 U.S.C. 157(b)(2).

D. The Debtors require the use of the cash collateral in order to preserve their operations and the value of their assets. The entry of the relief contained in this Order is in the best interests of the Debtors, their estates, and their creditors.

E. GE Canada Equipment Financing G.P. ("GE CEF"), Fifth Street Finance Corp. ("Fifth Street"), Sysco San Diego, Inc. ("Sysco"), Royal Bank of Canada ("Royal Bank") and Toronto Dominion Bank ("TD Bank") (collectively, GE CEF, Fifth Street, Sysco, Royal Bank and TD Bank shall be referred to as "Lenders") have asserted, or may assert, a lien against the property of certain of the Debtors and the cash proceeds thereof (the "Cash Collateral").

F. For avoidance of doubt, the provisions and protections of this Interim Order shall apply to each Lender only with respect to the Debtor(s) against whom such Lender has a prepetition secured claim (in each case, the "Applicable Debtor"), and nothing contained herein shall grant any Lender any rights or claims against any Debtor that is not an Applicable Debtor of such Lender. Similarly, unless otherwise provided, the adequate protection and other obligations of a Debtor under this Interim Order shall only apply to the Lender(s) that hold a prepetition secured claim against such Debtor (in each case, the "Applicable Lender").

G. This Court has not been asked to find and it does not find, that any security interest asserted by any Lender is valid or perfected. Nothing in this order constitutes a limitation on the applicability of Massachusetts Local Bankruptcy Rules. *and subject to the reservation of rights provisions in paragraph 11*

H. Pending a final hearing on the Motion, the replacement liens and other forms of protection set forth below will adequately protect the interests of the Lenders for the purposes of sections 361, 363(e) and 507(b) of the Bankruptcy Code.

I. Due and adequate notice of the hearing has been given, and no further notice of the hearing is required before the entry of the relief provided for in this Order.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is allowed, on an interim basis, as set forth herein.
2. The Debtors are authorized to use Cash Collateral in the ordinary course of their business substantially in accordance with the budget attached hereto as Exhibit A (the "Budget") for the period (the "Specified Period") from the Petition Date through the date which is the earliest to occur of: (a) an Event of Default (subject to the Debtor's right to obtain further authorization to use Cash Collateral within the Notice Period) or (b) the final hearing on the Motion.
3. The Debtors shall use Cash Collateral during the Specified Period, at the times, in the amounts and solely for the purposes identified in the Budget (as such may be amended with the consent of the Lenders or approval of the Court) provided, however, the Debtors shall be authorized to exceed the expenses in the Budget by no more than ten percent (10%) (on an aggregate basis) (the "Permitted Variance") and to apply any unused portion in one week to any subsequent weekly period.

4. For the purposes of sections 361, 363(e) and 507(b) of the Bankruptcy Code and adequate protection for the Debtors' use of Cash Collateral, the Lenders are hereby granted replacement liens (the "Replacement Liens") in and to all property of the kind presently securing the prepetition obligations of the Debtors to the Lenders, including property purchased or acquired with the Cash Collateral together with any proceeds thereof, but excluding causes of action under chapter 5 of the Bankruptcy Code and proceeds thereof. The Replacement Liens shall only attach to and be enforceable against the same types of property, to the same extent, and in the same order of priority as existed immediately prior to the Petition Date. The Replacement Liens shall be recognized only to the extent of any post-petition diminution in value of the prepetition collateral of each Applicable ^{Lender} including without limitation as a result of, arising from, or otherwise attributable to the use of of Cash Collateral during these bankruptcy cases, the deterioration, use, sale, lease or other disposition of the prepetition collateral, and the imposition of the automatic stay. *Claims of intercompany transfers will be entitled to priority status under sections 507(a)(2) and 503(b) of the Bankruptcy Code*

5. The Replacement Liens shall not attach to any avoidance powers held by the Debtors or any trustee for the Debtors, including avoidance set forth in sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, or to the proceeds of any claims under or actions commenced pursuant such powers.

6. On the third business day of each week following entry of this Order, the Debtors shall furnish to the ~~Applicable~~ Lenders and their counsel (and any official committee of unsecured creditors appointed in this bankruptcy case and its counsel): (i) a weekly cash report setting forth, in comparative form, the actual results achieved against projected for the prior week, including the actual cash receipts and disbursements and the variance of the actual results from those estimated in the Budget; and (ii) such other documents information as may be

reasonably requested. The Debtors shall also furnish copies of their monthly operating reports as filed with the Office of the United States Trustee. Upon reasonable notice by an ~~Applicable~~ Lender, the Debtors shall permit such Lender and any of its agents reasonable access to the Debtors' records and place of business during normal business hours to verify the existence, condition and location of collateral in which the ~~Applicable~~ Lender holds a security interest and to audit the Debtors' cash receipts and disbursements.

7. The Debtors' authority to use Cash Collateral as provided for in this Order shall terminate upon the occurrence of any of the following events, unless waived by the Applicable Lender in writing (collectively, the "Events of Default"):

- (a) the failure by the Debtors to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Order;
- (b) a default by the Debtors after the Petition Date in reporting the information specified in paragraph 6 above, if such default will remain uncured for three (3) days following written notice from the Applicable Lender to the Debtors; *which notice shall also be submitted to the United States Trustee and any creditors committee.*
- (c) reversal, vacatur, or modification (without the express prior written consent of the Lenders, each in its sole discretion) of this Order, other than in accordance with the final order approving the Motion; or
- (d) dismissal of the case or conversion of the case to a chapter 7 case, or appointment of a chapter 11 trustee, examiner with enlarged powers, other responsible person.

8. Upon the occurrence of an Event of Default, the Debtors' authority to use Cash Collateral shall cease if the Debtors do not within five (5) days thereof (the "Notice Period") seek an emergency hearing with the Court and obtain the further use of Cash Collateral.

9. This Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Replacement Liens to the extent set forth in Paragraph 4 without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking

of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the Replacement Liens, or to entitle the Lenders to the priorities granted herein. The Lenders, in their sole discretion, may file a photocopy of this Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

10. Nothing herein affects the validity or enforceability of that certain Interlender Agreement, dated as of October 16, 2009, between GE CEF and Fifth Street, as amended, restated, or otherwise modified.

11. Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of (a) the Lenders' right to seek any other or supplemental relief in respect of any Applicable Debtor, including the right to seek additional adequate protection (without prejudice to any other person's right to object to or otherwise oppose such additional adequate protection) or oppose the further use of Cash Collateral; (b) any of the rights of any Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of these cases or successor cases, conversion of any of these cases to cases under chapter 7, (iii) request appointment of a chapter 11 trustee or examiner with expanded powers, or (iv) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans.

12. This Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable nunc pro tunc to

the Petition Date immediately upon execution thereof. The Court has and will retain jurisdiction to enforce this Order according to its terms.

13. Nothing in this Order shall constitute a waiver by or restrict the Debtors' right to seek, or Lenders' right to oppose, the further use of Cash Collateral.

14. This Order and the Debtors' use of Cash Collateral as authorized in this Order shall become effective immediately upon entry of this Order by the Court.

15. A continued hearing on the Debtors' Motion shall be held on ~~July~~ ^{August 1} _____, 2011 at 9:30 a.m. in Worcester, Massachusetts

16. A copy of this Order, shall be served by the Debtors via first class mail on or before July 5, 2011 upon: (a) the Office of the United States Trustee; (b) the Lenders, or their counsels; (c) the creditors holding the thirty (30) largest claims against the Debtors; (d) all known taxing authorities that have claims against the Debtor; (e) any party which has filed, prior to the date of entry of this Order, a request for service of pleadings in this case; and (f) counsel for any official committee of unsecured creditors appointed in this case pursuant to section 1102 of the Bankruptcy Code. Service in accordance with this paragraph shall be deemed good and sufficient notice and service of this Order and of the final hearing on the use of Cash Collateral.

Henry J. Boroff
United States Bankruptcy Judge
Henry J. Boroff

Dated: June 30, 2011



Certified to be a true and correct copy of the original
James M Lynch, Clerk
U.S. Bankruptcy Court
District of Massachusetts
By: Alberta Barona
Deputy Clerk

Date: 6/30/11

Appendix G

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re: Massachusetts Elephant & Castle Group, Inc., et al. ¹ Debtors	Chapter 11 Case No. 11-16155 Jointly Administered
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STIPULATION AND FINAL ORDER (A) AUTHORIZING USE OF CASH COLLATERAL; (B) GRANTING ADEQUATE PROTECTION; (C) AUTHORIZING VARIOUS CARVE-OUTS FROM LENDER'S COLLATERAL AND (D) GRANTING RELATED RELIEF

This matter having come before the Court on the Motion of the Debtors for an Order Pursuant to sections 105, 361, 362, and 363 of Bankruptcy Code (A) Authorizing Use of Collateral; (B) Granting Adequate Protection; (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001; and (D) Granting Related Relief (the "Motion") filed by Massachusetts Elephant & Castle Group, Inc. on behalf of itself and affiliated debtors and debtors in possession (collectively the "Debtors"); and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and notice of the Motion and the hearing being and sufficient notice under the circumstances; and it appearing from the record before the Court that sufficient cause exists for the entry of this order (this "Order"); the Court **FINDS AS FOLLOWS:**²

¹ The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152); E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

A. On June 28, 2011 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Massachusetts (the "Court"). The Court previously entered an order approving joint administration of the Debtors' bankruptcy cases.

B. The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the "Committee") was appointed in these cases on July 12, 2011.

C. This matter is a core proceeding pursuant to 28 U.S.C. 157(b)(2).

D. The Debtors require the use of the cash collateral in order to preserve their operations and the value of their assets. The entry of the relief contained in this Order is in the best interests of the Debtors, their estates, and their creditors.

E. GE Canada Equipment Financing G.P. ("GE CEF"), and Fifth Street Finance Corp. ("Fifth Street") (collectively, GE CEF and Fifth Street shall be referred to as "Lenders") have asserted, or may assert, a lien against property of certain of the Debtors and the cash proceeds thereof (the "Cash Collateral").³

F. For avoidance of doubt, the provisions and protections of this Order shall apply to each Lender only with respect to the Debtor(s) against whom such Lender has a prepetition secured claim (in each case, the "Applicable Debtor"), and nothing contained herein shall grant any Lender any rights or claims against any Debtor that is not an Applicable Debtor of such

³ Sysco San Diego, Inc. ("Sysco") filed a UCC financing statement against one Debtor (E&C Pub, Inc). Sysco has informed the Debtors that the pre-petition indebtedness alleged to be outstanding from such Debtor entity to Sysco totals \$2,276.93. Sysco has not objected to the Debtors' use of Cash Collateral as requested by the Motions. Also, Royal Bank of Canada ("RBC") has made a Personal Property Security Act filing in Canada against one Debtor, Repechage Investments Limited, the ultimate parent entity of the other Debtors ("RIL") which filing does not give rise to any claim in the Cash Collateral to be used under this Stipulation and Final Order. The RBC filing relates to an outstanding Letter of Guarantee in the amount of USD \$190,000 issued by RIL in favor of a landlord. RBC holds USD \$190,000.00 in a "restrained" investment account, which is held as collateral for the Letter of Guarantee.

Lender. Similarly, unless otherwise provided, the adequate protection and other obligations of a Debtor under this Order shall only apply to the Lender(s) that hold a prepetition secured claim against such Debtor (in each case, the "Applicable Lender").

G. This Court has previously entered interim cash collateral orders (collectively, the "Interim Cash Collateral Orders") approving the Debtors' use of Cash Collateral (as defined below) for the cumulative post-petition period ending on December 8, 2011 (the "Interim Cash Collateral Order Period"), subject to and in accordance with the terms of such Interim Cash Collateral Orders.

H. On November 18, 2011 the Debtors filed a motion (a) authorizing and approving certain bidding procedures (the "Bid Procedures"), (b) scheduling a hearing (the "Sale Hearing") to consider the sale of substantially all of the Debtors' assets to Original Joe's Acquisition Corporation (together with any designees, the "Stalking Horse Bidder") or another bidder submitting a higher or better offer at a proposed auction (the "Auction") scheduled for January 24, 2012 (subject to the Court's availability), (c) prescribing the manner and notice of the Sale Hearing, (d) authorizing the sale of the Debtors' assets pursuant to that certain Asset Purchase Agreement between the Debtors and the Stalking Horse Bidder dated November 18, 2011 (the "APA") free and clear of all Liens (as that term is defined in the APA), (e) authorizing the assumption and assignment of Designated Contracts (as that term is defined in the APA), and (f) granting other related relief (the "Sale Motion"). The Debtors anticipate a closing on the sale to the Stalking Horse Bidder or a higher or better bidder on or before February 3, 2012.

I. Nothing in this Order constitutes a limitation on the applicability of Massachusetts Local Bankruptcy Rules.

J. Subject to the Lenders' reservation of rights pursuant to Paragraph 30 hereof, the replacement liens and other forms of protection set forth below are intended to adequately

protect the interests of the Lenders for the purposes of sections 361, 363(e) and 507(b) of the Bankruptcy Code.

K. Due and adequate notice of the hearing has been given, and no further notice of the hearing is required before the entry of the relief provided for in this Order.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

Permitted Use of Cash Collateral

2. The Debtors are authorized to use Cash Collateral in the ordinary course of their business in accordance with the budget (subject to the Permitted Variance as defined in Paragraph 3) attached hereto as Exhibit A (which incorporates budgeted and accrued liabilities incurred for the respective time periods covered by the Interim Cash Collateral Orders, as amended, supplemented or otherwise modified from time to time with the written consent of the Debtors, GE CEF and the Committee in their respective sole discretion, the "Final Budget"), which Final Budget shall be for the period (the "Specified Period") from December 8, 2011, through the date which is the earliest to occur of (a) the expiration of the Notice Period (as defined in Paragraph 21 below) following the issuance by GE CEF of a notice as provided under Paragraph 21 below, following the occurrence of an Event of Default (as defined in Paragraph 20 below) (subject to the Debtor's right to obtain further authorization to use Cash Collateral within the Notice Period), (b) the date on which a plan of reorganization of the Debtors or a sale of substantially all the Debtors' assets pursuant to a § 363 sale either to a third party purchaser or to a Lender as a result of a credit bid by such lender (a "Sale") is consummated, and (c) February 3, 2012 (or such later date to which GE CEF consents in writing in its sole discretion) (the earliest to occur, the "Termination Date").

3. The Debtors shall use Cash Collateral during the Specified Period, at the times, in

the amounts and solely for the purposes identified in the Final Budget; provided, however, the Debtors shall be authorized to exceed the expenses in the Final Budget (other than expenses consisting of the fees and expenses of the Retained Professionals (as defined below) of the Debtors and the Committee, the payment of which shall be subject to the Carve-Out provisions in Paragraph 22 and any other applicable provision of this Order) by no more than ten percent (10%) on an aggregate basis for all such budgeted expenses (the "Permitted Variance") in any week. The Debtors shall be authorized to apply any unused portion of the budgeted amount for expenses in one week (as set forth in the Final Budget) to any subsequent weekly period during the Specified Period; provided, however, that the Debtors shall not be authorized to apply any unused portion of the budgeted amount for the period prior to the Specified Period, to any weekly period during the Specified Period.

Allowance of GE CEF's Claims and Liens

4. The Debtors, except Elephant & Castle Pratt Street, LLC ("E&C Pratt"), are parties to that certain Fourth Amended and Restated Credit Agreement dated as of December 18, 2009 (as amended, restated, supplemented or otherwise modified from time to time, the "GE CEF Prepetition Credit Agreement," and collectively with the related pledge and security agreements, security documents, guarantees, and other loan documents, the "E&C Prepetition Credit Documents") with GE CEF. As of the Petition Date, the Debtors (except E&C Pratt) were truly and justly indebted and liable to GE CEF, without defense, counterclaim or offset of any kind, in the aggregate principal amount of approximately \$19,217,831 in respect of loans and other financial accommodations made by GE CEF pursuant to the E&C Prepetition Credit Documents, plus interest thereon (at the applicable rate set forth therein), fees, costs and expenses incurred in connection therewith as provided in the E&C Prepetition Credit Documents (collectively, together with any other pre-petition or post-petition amounts outstanding under the

E&C Prepetition Credit Documents, the “GE CEF E&C Debt”). In addition, certain of the Debtors are parties to certain guaranty and indemnity agreements with respect to indebtedness of their non-debtor affiliate, Interim Aviation Holdings, Inc. (the “Aviation Guaranties,” and together with the E&C Prepetition Credit Documents, the “GE CEF Prepetition Credit Documents”).⁴ As of the Petition Date, certain of the Debtors were truly and justly indebted and liable to GE CEF, without defense, counterclaim or offset of any kind, in the aggregate principal amount of approximately \$2,126,452 under the Aviation Guaranties, plus interest thereon (at the applicable rate set forth therein), fees, costs and expenses incurred in connection therewith as provided in the Aviation Guaranties (collectively, together with any other pre-petition or post-petition amounts outstanding under the Aviation Guarantees, the “GE Aviation Debt,” and together with the GE CEF E&C Debt, the “GE CEF Debt”).

5. Under the GE CEF Prepetition Credit Documents, the Debtors (except E&C Pratt) granted to GE CEF security interests in and liens upon (the “GE CEF Prepetition Security Interests”) substantially all their assets and all proceeds thereof (to the extent provided in the GE CEF Prepetition Credit Documents, the “GE CEF Prepetition Collateral”). After giving effect to paragraph 7 of this Order, the GE CEF Prepetition Security Interests in the GE CEF Prepetition Collateral are valid, binding, enforceable, perfected, and, subject to the Carve-Outs, as defined and set forth in Paragraph 22 hereof, have priority over any and all other security interests or liens on the GE CEF Prepetition Collateral. After giving effect to paragraph 7 of this Order, no portion of the GE CEF Debt is subject to avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law. The Debtors and their respective estates do not have, and hereby forever release, any claims, counterclaims,

⁴ As set forth in GE CEF’s proofs of claim filed in these cases, the Debtors Massachusetts Elephant & Castle Group, Inc., Elephant & Castle (Chicago) Corporation, E&C Capital, LLC, and E&C Eye Street, LLC did not guarantee the portion of GE CEF Debt related to an aircraft loan.

causes of action, defenses or setoff rights, whether arising under the Bankruptcy Code or otherwise, against GE CEF and its affiliates, agents, officers, directors, employees and attorneys. The GE CEF Debt is hereby allowed in the full amount specified in Paragraph 4 (including, without limitation, all unpaid and accrued prepetition and post-petition interest, (at the applicable rate set forth therein), fees, costs, expenses and other amounts chargeable under the GE CEF Prepetition Credit Documents, and such allowed claim shall be an allowed secured claim to the full extent of the value of all of the assets of the Debtors.

6. Notwithstanding the priority of the entire GE CEF Debt, the payment of the GE Aviation Debt by Debtors other than Repechage Investments Limited shall be subordinated in connection with any disposition of substantially all the GE CEF Prepetition Collateral consented to by GE CEF (other than in connection with a plan or sale in which David Dobbin, or any of his affiliates, is participating or has any interest in) to the payment in full of the allowed administrative expenses set forth in the Final Budget and allowed general unsecured claims against Debtors other than Repechage Investments Limited. For avoidance of doubt, (a) GE CEF shall be paid the full amount of its GE CEF E&C Debt, including recouping the amounts carved out from the GE CEF Prepetition Collateral described in Paragraph 22(f) hereof, before giving effect to the subordination contemplated by this Paragraph, and (b) this Paragraph shall not affect the priority or payment of the GE CEF Debt (including the GE Aviation Debt) with respect to Repechage Investments Limited.

7. This Order shall be binding upon all parties in interest, including the Debtors and the Committee, and as such, subject to the provisions of Paragraph 22 pertaining to the Carve-Outs, (i) the GE CEF Debt shall constitute allowed claims, and no portion of the GE CEF Debt is subject to counterclaim, setoff, subordination (except to the extent provided in Paragraph 6), recovery, recharacterization, defense or avoidance, for all purposes in the cases and any

subsequent chapter 7 cases, (ii) the GE CEF Prepetition Security Interests on the GE CEF Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected and not subject to recharacterization, subordination (except to the extent provided in Paragraph 6), avoidance or reduction, and (iii) the GE CEF Debt, the GE CEF Prepetition Security Interests, and GE CEF shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, including any successor thereto (including any chapter 7 or 11 trustee appointed by or elected for the Debtors).

Limitations on Use of Cash Collateral

8. Notwithstanding anything herein to the contrary, no Cash Collateral may be used to (i) object, contest or raise any defense to, the validity, authorization, perfection, priority, extent, or enforceability of the GE CEF Debt, the GE CEF Prepetition Security Interests, the liens granted to GE CEF by this Order, or the other adequate protection granted hereunder; (ii) assert any claims or causes of action against GE CEF; (iii) as long as the Debtors are authorized to use the Cash Collateral pursuant to the terms of this Order, prepare or file any pleading or take any other action in furtherance of any request (other than to seek an extension of the Termination Date pursuant to Paragraph 2 hereof) seeking, without the consent of GE CEF, the Court's authorization to use the Cash Collateral under terms other than those provided herein, or the Court's authorization to grant any priming, senior, pari passu, or junior security interest in or lien on the GE CEF Prepetition Collateral or the Cash Collateral; (iv) prevent, hinder or otherwise delay GE CEF's assertion, enforcement or realization on the GE CEF Prepetition Collateral or Cash Collateral in accordance with the GE CEF Prepetition Credit Documents, bankruptcy law and this Order; or (v) pay any amount on account of any claims arising prior to the Petition Date, other than set forth in the Carve-Outs pursuant to Paragraph 22 hereof, unless such payments are consistent with prior Budgets or the Final Budget and approved by an order of this Court.

Notwithstanding the foregoing, the Debtors may use Cash Collateral to contest whether an Event of Default has occurred under this Order.

9. From and after entry of this Order, subject to the provisions of Paragraph 22 pertaining to the Carve-Outs, no expenses of administration of these cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from GE CEF, the GE CEF Prepetition Collateral or the Cash Collateral pursuant to section 506(c) of the Bankruptcy Code or other applicable law, without GE CEF's prior written consent, and no such consent will be implied from any action, inaction, or acquiescence by GE CEF, including approval of the Final Budget. Notwithstanding the foregoing, to the extent a Sale does not occur as set forth in Paragraph 2 hereof, (i) the parties hereby expressly preserve their rights to assert (or object to) any and all claims pursuant to Section 506(c) with respect to incurred but unpaid fees and expenses set forth in the Final Budget and Exhibit B and (ii) in the event mutually agreeable cash collateral provisions cannot be negotiated at such time, the Debtors shall be authorized to convert their cases to proceedings under Chapter 7.

Adequate Protection

10. For the purposes of sections 361, 363(e) and 507(b) of the Bankruptcy Code and adequate protection for the Debtors' use of Cash Collateral, subject to the Carve-Outs (as defined in Paragraph 22 below) the Lenders are hereby granted valid, binding, enforceable, non-avoidable, and automatically perfected postpetition security interests and liens (the "Replacement Liens") in and to all presently owned and hereafter acquired personal property, real property, and all other assets of the Applicable Debtors, including property purchased or acquired with the Cash Collateral together with any proceeds thereof, but excluding causes of action under chapter 5 of the Bankruptcy Code and proceeds thereof (the "Post Petition

Collateral”). The Replacement Liens shall be recognized only to the extent of any post-petition diminution in value of the prepetition collateral of each Applicable Lender, including without limitation as a result of, arising from, or otherwise attributable to the use of Cash Collateral during these cases, the deterioration, use, sale, lease or other disposition of the prepetition collateral, and the imposition of the automatic stay.

11. The Replacement Liens in favor of each Applicable Lender shall be junior only to the Carve-Outs and any non-avoidable, valid, enforceable and properly perfected liens and security interests in favor of any Person on or in the assets of any Applicable Debtor, as a pre-petition debtor, which existed on the Petition Date (including any non-avoidable, valid and enforceable liens and security interests in existence on the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code) and are not subject to section 552(a) of the Bankruptcy Code, but only to the extent such liens and security interests are superior in priority to such Applicable Lender’s pre-petition liens and security interests, after giving effect to any existing subordination or intercreditor arrangements. The Replacement Liens shall be enforceable against and binding upon the Applicable Debtors, their estates and any successors thereto, including without limitation, any trustee or other estate representative appointed in the cases, or any case under chapter 7 of the Bankruptcy Code upon conversion of any of the cases, or in any other proceedings superseding or related to any of the foregoing (collectively, “Successor Cases”). Except as provided herein (or upon the prior written consent of the Applicable Lender), and subject to the Carve-Outs, the Replacement Liens shall not be made subject to, junior to, or pari passu with any lien or security interest by any court order heretofore or hereafter entered in these cases or any Successor Cases. The Replacement Liens shall not be subject to sections 506(c), 510, 549, or 550 of the Bankruptcy Code. The Replacement Liens shall not be made subject to, junior to, or pari passu with any lien or interest

that is avoided and preserved for the benefit of any estate pursuant to section 551 of the Bankruptcy Code.

12. The Replacement Liens shall not attach to any avoidance powers held by the Debtors or any trustee for the Debtors, including avoidance set forth in sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, or to the proceeds of any claims under or actions commenced pursuant such powers.

13. This Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Replacement Liens without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the Replacement Liens, or to entitle the Lenders to the priorities granted herein. The Lenders, in their sole discretion, may file a photocopy of this Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

14. As further adequate protection against any diminution in value of their respective interests in the Collateral, subject to the Carve-Outs, the Applicable Lenders are each hereby granted as and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, a superpriority administrative expense claim against the Applicable Debtors (the "Adequate Protection Superpriority Claims") on all assets of the Applicable Debtors, including proceeds of avoidance actions to the extent allowable under section 507(b) of the Bankruptcy Code. The Adequate Protection Superpriority Claims of the Lenders shall have priority over all administrative expense claims (other than the Carve-Outs) and unsecured claims against the

Applicable Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code but shall be recognized only to the extent of any post-petition diminution in value of the prepetition collateral of each Applicable Lender.

15. The Debtors shall comply with the following reporting covenants:
 - a. The Debtors shall continue to provide GE CEF, Fifth Street and the Committee and their respective representatives with reasonable access to the Debtors' premises, records, personnel and advisors during normal business hours (without unreasonable interference with the proper operation of the Debtors' businesses and upon reasonable prior notice);
 - b. The Debtors shall continue to convene (at a designated time mutually acceptable to the Debtors, GE CEF and the Committee) a weekly telephonic conference call among one or more members of the Debtors' senior management, and one or more senior members of each of Phoenix Management Services Inc. ("Phoenix") and BellMark Partners, LLC ("BellMark") and representatives of GE CEF, Fifth Street and the Committee and their respective professionals for the purpose of discussing the Debtors' weekly results, any other matter relating to the financial and operational results of the Debtors and any matter relating to the § 363 process or the plan process;
 - c. Each of GE CEF, Fifth Street and the Committee shall be entitled communicate directly with representatives of Phoenix and BellMark at mutually acceptable times to discuss any aspect of the Debtors' operational or

financial results or any aspect of the § 363 process or the plan process;

- d. As soon as reasonably practicable after receipt thereof, the Debtors shall provide GE CEF, Fifth Street and the Committee with copies of each § 363 Bid (as defined below) or Plan Proposal (as defined below) or any written modifications thereof; and
- e. As soon as reasonably practicable, the Debtors shall provide such other documents, information, and access as may be reasonably requested from time to time by GE CEF, Fifth Street or the Committee.

16. No Debtor may make any advances or other transfers except in the ordinary course of business, and any claims of any Debtor against any other Debtor arising from any such advances or transfers shall be entitled to administrative priority status under sections 507(a)(2) and 503(b) of the Bankruptcy Code. No Debtor may sell, transfer, lease, encumber or otherwise dispose of any portion of the GE CEF Prepetition Collateral or any Post-Petition Collateral (other than in the ordinary course of business or dispositions of obsolete or worn out assets) without the prior written consent of the GE CEF (and no such consent shall be implied from any other action, inaction or acquiescence by GE CEF or any order of this Court).

17. As further protection of the interests of the Lenders in the Cash Collateral and the Collateral, the Debtors' use of Cash Collateral shall be conditioned upon the Debtors' observance and performance in all material respects of the terms, provisions, covenants, and agreements specified in the GE CEF Prepetition Credit Documents directly pertaining to the maintenance and preservation of the GE CEF Prepetition Collateral, and solely to the extent that the Final Budget provides adequate funding for such observance and performance, and except as such terms, provisions, covenants, and agreements may be abrogated or modified under the Bankruptcy Code or this Order.

18. Notwithstanding anything to the contrary contained herein, (i) the rights of GE CEF to seek payment of any other postpetition interest (for any other period and/or for the default portion of any postpetition interest) and any reimbursement of any costs, fees and expenses under section 506(b) of the Bankruptcy Code or other applicable law are fully preserved, (ii) the rights of any other Lenders to seek payment of postpetition interest and reimbursement of any costs, fees and expenses under section 506(b) of the Bankruptcy Code or other applicable law are fully preserved and (iii) the rights of the Debtors and Committee to object to any future request of GE CEF and any other Lender for such payments are fully preserved.

19. The Debtors have used and shall continue to use commercially reasonable efforts to pursue, in accordance with the timeline and other provisions set forth below, a process to sell all or substantially all of their assets pursuant to section 363 of the Bankruptcy Code on terms and conditions acceptable to GE CEF. The Debtors shall not discontinue or abandon the § 363 sale process (in favor of a plan process or for any other reason) without the prior written consent of GE CEF. Without limiting the foregoing, the Debtors shall comply with the following covenants and the § 363 sale process shall be subject to the following terms and conditions

- a. The Debtors (including through BellMark) have used commercially reasonable efforts to solicit, negotiate and document bids (the “§ 363 Bids”) from all interested parties (the “§ 363 Bidders”) to purchase all or substantially all of the assets of the Debtors (other than Repechage Investments Limited) pursuant to section 363 of the Bankruptcy Code, and, with the consent of GE CEF, have selected the Stalking Horse Bidder. If GE CEF consents in writing in its sole discretion after the entry of this Order, the Debtors may consider a bid to sponsor a plan of reorganization pursuant to

which the Debtors would be recapitalized and reorganized (the “Plan Sponsors” and their plan proposals, the “Plan Proposals” and the Plan Sponsors, together with the § 363 Bidders, collectively, the “Prospective Purchasers”). GE CEF shall be entitled, but not obligated, to make a Plan Proposal or § 363 Bid, including, without limitation, a “credit bid” on account of the allowed amount of the GE CEF Debt in connection with any sale process, whether conducted pursuant to section 363 of the Bankruptcy Code or as part of any plan of reorganization subject to confirmation under section 1129 of the Bankruptcy Code (including under section 1129(b)(2)(A)(iii)).

- b. The Debtors have maintained and shall continue to maintain a “data room” (the “Data Room”) containing financial, operating and other information reasonably relevant to the Debtors and their property, including, without limitation, financial statements, tax returns, sales projections and other business or proprietary information (collectively, the “Sales Information”) and shall provide access to such Data Room and shall otherwise provide such Sales Information to all Prospective Purchasers. The Sales Information may be provided pursuant to confidentiality arrangements that are in accordance with reasonable industry standards in the event that the Debtors and BellMark determine that such confidentiality arrangements are necessary and appropriate.
- c. In the event GE CEF in its sole discretion has consented to the Debtors’ pursuit of a plan process in lieu of a § 363 process, the Debtors shall not accept any Plan Proposal or otherwise seek to file or confirm a plan of reorganization without the prior written consent of GE CEF.

- d. The Debtors shall comply with the following timeline in connection with the § 363 process: (i) no later than December 8, 2011 or such date as the Court's schedule allows, the Debtors shall have obtained an order of the Court approving the Bid Procedures and the Debtors' selection of the Stalking Horse Bidder acceptable to GE CEF; (ii) no later than January 24, 2012 or such date as the Court's schedule allows, the Debtors shall have concluded the auction, (iii) no later than January 24, 2012, the Debtors, with the consent of GE CEF, shall have obtained an order of the Court approving the highest and best offer received at the auction, and (iv) no later than February 3, 2012, the Debtors, with the consent of GE CEF, shall have consummated such sale transaction. Any of these deadlines may be extended with the written consent of GE CEF.
- e. Dobbin's role in the § 363 process shall be limited as follows: (i) Dobbin shall not participate in and shall recuse himself from all meetings or other discussions with other members of the Debtors' Board of Directors or senior management concerning (x) any § 363 Bid (including any § 363 Stalking Horse Bid) other than a § 363 Bid in which he or any affiliate has an economic interest or in which the participation of Dobbin or any affiliate is being solicited, or (y) the comparative analysis of the various § 363 Bids (including any § 363 Bid in which Dobbin or any affiliate has an economic interest or in which the participation of Dobbin or any affiliate is being solicited), (ii) the Debtors and their professionals shall not disclose to, or discuss with, Dobbin the terms of any § 363 Bids (other than any § 363 Bid in which Dobbin or an affiliate has an economic interest or in which the participation of Dobbin or any affiliate is being solicited), and (iii) Dobbin

shall not participate in any management presentations or other meetings or communications with any Prospective Purchaser, other than communications solely in his individual capacity with any Prospective Purchaser with respect to any § 363 Bid in which he or an affiliate would have an economic interest or in which the participation of Dobbin or any affiliate is being solicited (provided that Dobbin expressly advises each such Prospective Purchaser that he is acting in his individual capacity and not on behalf of the Debtors, and that he does not control the Debtors' decision on this matter).

- f. Notwithstanding anything to the contrary herein, any date in this Order requiring action by the Court may be extended by the Court if it determines that its docket schedule does not permit it to take the specified action by the specified date.

Events of Default

20. Except to the extent waived in writing by the Applicable Lender, the following events constitute "Events of Default":

- a. The failure by the Debtors to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Order;
- b. A default by the Debtors in complying with the reporting obligations in Paragraph 15 hereof, if such default will remain uncured for three (3) days following written notice from the Applicable Lender to the Debtors, which notice shall also be submitted to the United States Trustee and counsel to the Committee;
- c. Reversal, vacatur, or modification (without the express prior written consent of the Lenders, each in its sole discretion) of this Order, other than in

accordance with this Order; and

- d. Dismissal of the case or conversion of the case to a chapter 7 case, or appointment of a chapter 11 trustee, examiner with enlarged powers, or other responsible person.

21. The Debtors' authority to use Cash Collateral shall cease if the Debtors do not, within five business (5) days after the delivery by the Applicable Lender to counsel to the Debtors, counsel to the Committee and the Office of the United States Trustee of a written notice that an Event of Default has occurred and is continuing and that the Applicable Lender is terminating its consent to Debtors' continued use of Cash Collateral (the "Notice Period"), seek an emergency hearing with the Court and obtain the further use of Cash Collateral

Carve-Outs

22. Notwithstanding anything to the contrary contained in this Order, the liens and claims granted to the Lenders in this Order and/or any prepetition loan documents (including without limitation the GE CEF Prepetition Security Interests, the Replacement Liens and the Adequate Protection Superpriority Claims) shall be junior in priority and subject to the payment, without duplication, of the following fees and claims and the Debtors may pay from Cash Collateral the amounts set forth below, exclusive of any retainers held by any Retained Professional together with the limitations set forth therein, collectively, (the "Carve-Outs"):

- (a) The claims of the Debtors' retained professionals (the "Debtors' Professionals") for unpaid fees and expenses accrued for services rendered at any time on and after the Petition Date and prior to the Termination Date, up to an aggregate amount equal to 100% of the cumulative amount set forth in **Exhibit B** hereto (setting forth cumulative fees and expenses of the Retained Professionals) for the payment of the fees and expenses of all

the Debtors' Professionals for the postpetition period ending on the earlier of the applicable date of determination and the Termination Date (with the amount set forth in the Exhibit B for the week in which the Termination Date occurs, prorated for that portion of the week ending on the day immediately preceding the Termination Date); provided that (I) fees and expenses of the Debtors' Professionals shall only be included in the Carve-Out to the extent such fees and expenses are ultimately allowed on a final basis by this Court under sections 328, 330 or 331 of the Bankruptcy Code, and are not excluded under Paragraph 8 of this Order, (II) in the case of BellMark Partners LLC ("BellMark"), the Carve-Out shall be limited to the following fees and expenses payable or reimbursable pursuant to that certain engagement letter dated as of April 12, 2011, as amended with the prior written consent of GE CEF (the "BellMark Engagement Letter"): (x) its monthly \$5,000 fee, (y) its reasonable, out-of-pocket expenses that are reimbursable pursuant to the Paragraph 5 of the Bellmark Engagement Letter (but exclusive of amounts payable pursuant to the indemnification provisions in the BellMark Engagement Letter, and (z) any Transaction Fee (as defined in the BellMark Engagement Letter) payable pursuant to and in accordance with the Court's August 31, 2011 Order Approving the Debtors' Application to Employ BellMark, and (III) nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in this clause (a);

(b) The claims of the Debtors' Professionals for unpaid fees and expenses accrued for services rendered on and after the Termination Date; provided

that, in each case, such fees and expenses are ultimately allowed on a final basis by this Court under sections 328, 330 or 331 of the Bankruptcy Code, are not excluded from payment from the Carve-Out under Paragraph 8 of this Order and do not exceed the sum of: (X) \$100,000 in the aggregate for all of the Debtors' Professionals; plus (Y) \$75,000 (the "Pre-Termination Rollover"), provided that the amount of the Pre-Termination Rollover shall not exceed the difference between (i) the cumulative amount set forth in **Exhibit B** hereto for the payment of the fees and expenses of all of the Debtors' Professionals for the Specified Period and (ii) the amount actually and finally paid to the Debtors' Professionals for services rendered during the Specified Period; plus (Z) the difference between (i) \$120,000 and (ii) the amount actually and finally paid to the Committee's Professionals (as defined below) for services rendered during the period from and after entry of this Final Order through the date of entry of the final order approving the fee applications of the Committee's Professionals (the "Additional Rollover"); provided further that, if available, up to \$20,000 in the aggregate of the Pre-Termination Rollover and/or Additional Rollover shall be available to augment the Claims Servicing Carve-Out described in paragraph 22(f);

- (c) The unpaid fees payable to the United States Trustee and Clerk of the Bankruptcy Court pursuant to section 1930 of title 28 of the United States Code and the statutory interest payable to the United States Trustee pursuant to section 3717 of title 31 of the United States Code;

- (d) The claims of the Committee's retained professionals (the "Committee's Professionals," and together with the Debtors' Professionals, the "Retained Professionals") for unpaid fees and expenses accrued for services rendered at any time on and after the Petition Date and prior to the Termination Date, up to an aggregate amount equal to 100% of the cumulative amount set forth in Exhibit B for the payment of the fees and expenses of all the Committee's Professionals accrued for services rendered during the postpetition period ending on the earlier of the applicable date of determination and the Termination Date (with the amount set forth in the Exhibit B for the week in which the Termination Date occurs, prorated for that portion of the week ending on the day immediately preceding the Termination Date), provided that (I) fees of the Committee's Professionals shall only be included in the Carve-Out to the extent such fees are ultimately allowed on a final basis by this Court under sections 328, 330 or 331 of the Bankruptcy Code, and are not excluded under Paragraph 8 of this Order, and (II) the aggregate amount of the Carve-Out for the Committee's Professionals for unpaid fees and expenses accrued for services rendered after the date of entry of this Order (whether before or after the Termination Date), shall not exceed \$120,000, and (III) nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in this clause (d);
- (e) To the extent a Sale as set forth herein is consummated (which Sale, for avoidance of doubt, is consented to by GE CEF), and the buyer has not

agreed to pay or assume such amounts, GE CEF shall (i) carve out from the GE CEF Prepetition Collateral an amount equal to (A) accrued and unpaid administrative expenses incurred by the Debtors through the closing of the Sale (except professional fees and United States Trustee fees which shall be subject to Paragraphs 22(a)-(d) hereof) but only to the extent included in "Disbursements" as set forth in the Final Budget (the "Unpaid Administrative Expenses") and (B) all allowed and unpaid priority claims against the Debtors through the closing of the Sale, but only to the extent included in "Disbursements" as set forth in the Final Budget (the "Priority Claims," and collectively with the Unpaid Administrative Expenses, the "Priority/Administrative Carve Out"); and (ii) no later than three (3) business days after the closing of the Sale (that does not provide for the payment or assumption of such amounts by the buyer), GE CEF shall pay an amount equal to the Priority/Administrative Carve Out to the Debtors, and the Debtors shall as soon as reasonably practicable pay the Unpaid Administrative Expenses and Priority Claims;

- (f) GE CEF shall carve out from the GE CEF Prepetition Collateral (A) an amount equal to the lesser of \$500,000 and 10% of the aggregate amount of allowed general unsecured claims against the Debtors (the "Unsecured Creditor Carve-Out"), and (B) \$30,000 (as this sum may be augmented, if available, by the Pre-Termination Rollover and/or Additional Rollover) for use solely to pay the costs and expenses incurred by a party selected by the Debtors and acceptable to the Committee and GE CEF ("Claims Servicing Agent") to administer the Unsecured Creditor Carve Out (the

“Claims Servicing Carve Out”) as described further in paragraph 22(g) of this Order. No later than three (3) business days after the closing of any disposition of substantially all the GE CEF Prepetition Collateral (or such later date as agreed to in writing by GE CEF and the Committee), GE CEF shall pay to Goulston & Storrs, a Professional Corporation, as counsel to the Committee (the “Escrow Agent”) : (A) the lesser of 10% of all timely asserted and scheduled general unsecured claims and \$500,000, representing the maximum amount of the Unsecured Creditor Carve Out and (B) the Claims Servicing Carve-Out. The Escrow Agent shall hold the Unsecured Creditor Carve Out and the Claims Servicing Carve-Out in its client funds account pending further instructions or further order of the Court to turn over the Unsecured Creditor Carve Out and the Claims Servicing Carve-Out to the Claims Servicing Agent which shall be Escrow Agent’s sole obligation hereunder. The Unsecured Creditor Carve-Out shall be for the sole and exclusive benefit of holders of allowed general unsecured non-priority claims against all of the Debtors except Repechage Investments Limited (the “Beneficiaries”) to be distributed to the Beneficiaries on a pro-rata basis and shall have been funded by the proceeds of the GE CEF Pre-Petition Collateral which would otherwise have been applied to the GE CEF Debt and shall not be subject to the claims of any creditors, administrative claimants or any other person, other than those of the Beneficiaries, and may not be used to pay any costs of the Escrow Agent or a Claims Servicing Agent (including without limitation, a chapter 7 trustee, or a liquidating agent under a chapter 11 liquidating

plan) and GE CEF shall receive the balance of the funds remaining, if any, in the Unsecured Creditor Carve-Out in the event that 10% of the aggregate amount of allowed general unsecured claims against the Debtors totals less than \$500,000 after the process of claims administration by the Claims Servicing Agent has concluded;⁵

- (g) To the extent a Sale as set forth herein is consummated, the Debtors may thereafter: with the consent of the Committee and GE CEF: (i) file a motion seeking to dismiss the Debtors' bankruptcy proceedings (the "Dismissal Motion") which provides for (X) the transfer of the Unsecured Creditor Carve-Out and the Claims Servicing Carve-Out from the Escrow Agent to a Claims Servicing Agent and (Y) the distribution of the proceeds of the Unsecured Creditor Carve-Out by the Claims Servicing Agent to the Beneficiaries on a pro rata basis, as set forth in paragraph 22(f) of this Order (and all rights of the Office of the United States Trustee to object to such Dismissal Motion shall be preserved); (ii) move to convert their cases to Chapter 7 to accomplish the distribution of the Unsecured Creditor Carve-Out to the Beneficiaries on a pro rata basis, as set forth in this paragraph 22(f) of this Order, and other administrative aspects of winding up these proceedings, in which case the Escrow Agent shall be obligated to turn over to the Chapter 7 Trustee the full amount of

⁵ The Court here notes the objection of the United States trustee (the "UST"), seeking to reserve the right to later object to the disposition of the Unsecured Creditor Carve-Out and/or the Claims Servicing Carve-Out. Although the Court believes that the UST's concerns are not without reasonable basis, the UST does not sufficiently distinguish the applicability of SPM Manufacturing Corporation v. Stern, 984 F.2d 1305 (1st Cir. 1993). Finally, even if this Order could be characterized as the approval of a settlement with respect to which notice to interested parties is required, the Court finds and rules that, by dint of 11 U.S.C. §102(1) and Rules 2002(a)(3) and (i) of the Federal Rules of Bankruptcy Procedure, notice to the UST, together with the consent of the Debtor, the affected Lenders and the Official Unsecured Creditors Committee to the terms of the Stipulation, are sufficient and no further notice is required.

the Unsecured Creditor Carve-Out and the Claims Servicing Carve Out paid to such Escrow Agent as provided in paragraph 22(f) of this Order; or (iii) seek to confirm a Chapter 11 plan of liquidation to accomplish the distribution of the Unsecured Creditor Carve-Out to the Beneficiaries on a pro rata basis, as set forth in paragraph 22(f) of this Order, and other administrative aspects of winding up these proceedings, in which case the Escrow Agent shall be obligated to turn over to the duly appointed chapter 11 liquidation agent appointed under such plan the full amount of the Unsecured Creditor Carve-Out and the Claims Servicing Carve Out paid to such Escrow Agent as provided in paragraph 22(f); and

- (h) The Expense Reimbursement authorized to be paid by the Debtors in accordance with the Court's Order approving certain bidding procedures dated December 21, 2012 entered in connection with the Sale Motion (the "Bidding Procedures Order") under the circumstances detailed in Paragraph 9 of the Bidding Procedures Order .

23. Prior to the Termination Date, subject to Paragraph 22, the Debtors may pay the fees and expenses of the Retained Professionals in accordance with the procedures set forth in the Court's Order Establishing Procedures for Interim Monthly Compensation and Reimbursement of Expenses dated August 31, 2011 ("Compensation Order"). The Lenders shall retain the rights they have as parties in interest to object to any claims of any of the Retained Professionals pursuant to the Compensation Order.

24. The Unsecured Creditor Carve-Out funds pursuant to Paragraph 22(f) shall not be available to satisfy any intercompany claims of one Debtor against any other Debtor.

25. [Intentionally Omitted].

Effectiveness and Survivability

26. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Order shall become valid and binding upon and inure to the benefit of the Debtors, the Lenders, all other creditors of any of the Debtors, the Committee, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of these cases or any Successor Cases.

27. Except as otherwise set forth herein, the Debtors irrevocably waive any right to seek any amendment, modification or extension of this Order without the prior written consent of GE CEF, and no such consent shall be implied by any other action, inaction or acquiescence of the GE CEF. In the event any or all of the provisions of this Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, such modification, amendment or vacatur shall not affect the validity, perfection, priority, allowability, enforceability or non-avoidability of any advances, payments or use of cash whether previously or hereunder, or lien, claim, or priority authorized or created hereby. Any liens or claims granted to GE CEF hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Order shall be governed in all respects by the original provisions of this Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

28. Subject to the Carve-Outs and other distributions set forth in Paragraph 22 hereof, the terms and provisions of this Order, including the claims, liens, security interests and other protections granted to the GE CEF pursuant to this Order shall maintain their priority as provided by this Order until all prepetition obligations have been indefeasibly paid in full in cash, notwithstanding the expiration of the Specified Period or any earlier termination of the Debtors' authorization to use Cash Collateral.

Other Provisions

29. Nothing herein affects the validity or enforceability of that certain Interlender Agreement, dated as of October 16, 2009, between GE CEF and Fifth Street, as amended, restated, or otherwise modified.

30. Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of, (a) the Lenders' right to seek any other or supplemental relief in respect of any Applicable Debtor, including the right to seek additional adequate protection (without prejudice to any other Person's right to object to or otherwise opposed such additional adequate protection) or oppose the further use of Cash Collateral, except as otherwise set forth herein; (b) any of the rights of any Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request dismissal of any of these cases or successor cases, conversion of any of these cases to cases under chapter 7, (ii) request appointment of a chapter 11 trustee or examiner with expended powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, as modified by this Order, a chapter 11 plan or plans.

31. This Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable nunc pro tunc to the Petition Date immediately upon execution thereof. The Court has and will retain jurisdiction to enforce this Order according to its terms.

32. In the event of any conflict between this Order and any other order entered by the Court, the provisions of this Order shall control.


33. Nothing in this Order shall constitute a waiver by or restrict the Debtors' right to seek, or Lenders' right to oppose, the further use of Cash Collateral after the Termination Date.

34. Notwithstanding any other provision of this Order, holders of valid and

enforceable prepetition and postpetition Perishable Agricultural Commodities Act ("PACA") Trust Claims shall retain their trust rights, if any, to the extent provided by law against all prepetition and postpetition assets of Debtors and their assets, and subject to the consent of GE CEF and the Committee, or approval of the Court, Debtors will pay valid and enforceable postpetition PACA trust Claims when due.

35. This Order and the Debtors' use of Cash Collateral as authorized in this Order shall become effective immediately upon entry of this Order by the Court.

36. A copy of this Order shall be served by the Debtors via first class mail upon: (a) the Office of the United States Trustee; (b) the Lenders, or their counsel; (c) the creditors holding the thirty (30) largest claims against the Debtors; (d) all known taxing authorities that have claims against the Debtor; (e) any party which has filed, prior to the date of entry of this Order, a request for service of pleadings in this case; and (f) counsel for the Committee.


Henry J. Boroff
United States Bankruptcy Judge

Dated: December 21, 2011

Exhibit A

	1	2	3	4	5	6	7	8	9	10	Total
Week Ending (Friday)											
Week Ending (Friday)	\$ 901,508	\$ 1,067,704	\$ 977,679	\$ 772,406	\$ 984,994	\$ 718,006	\$ 791,283	\$ 774,854	\$ 822,246	\$	\$ 7,261,271
Coal Collector from Feed	508,200	570,600	618,000	410,022	487,161	464,525	428,345	442,222	494,013		4,580,676
Coal Collector from Storage	204,600	411,200	271,200	208,200	204,726	207,200	207,200	207,200	216,102		2,092,226
Coal Collector from Inventory	208	208	207	198	198	207	310	207	207		2,092
Coal Collector from Fuel Train	97,000	102,200	82,317	72,100	80,202	70,200	73,810	76,872	80,200		791,676
Coal Collector from 200 Sds	-	-	-	-	-	-	-	-	-		279,672
Coal Collector from 200 Sds	-	-	-	-	-	-	-	-	-		378,672
Other Coal from 200 Sds	-	-	-	-	-	-	-	-	-		20,000,211
Total Week	\$ 1,000,308	\$ 1,082,208	\$ 982,204	\$ 772,406	\$ 972,202	\$ 728,006	\$ 792,206	\$ 822,206	\$ 822,206	\$	\$ 7,261,271
Production Operating Statements											
CO2E Feed	128,344	161,020	164,331	147,200	118,200	121,214	116,407	128,485	131,512		1,199,827
CO2E Storage	109,200	118,200	77,870	84,100	77,200	70,802	80,272	80,270	82,246		811,000
CO2E Inventory	202	202	213	82	164	100	220	102	102		1,278
Total CO2E Deliverments	237,746	287,422	242,414	231,182	195,400	192,016	196,779	208,857	213,854		2,012,325
Payroll - Fuel	222,000	322,000	212,000	204,100	198,204	204,001	194,803	201,000	198,204		1,882,200
Employee Travel	33,000	11,400	30,111	8,370	27,243	6,703	27,206	6,277	27,201		108,111
RR	-	-	-	-	-	-	-	-	-		-
Short Lead Payments	-	-	-	-	-	-	-	-	-		-
Overhaul	-	-	-	-	-	-	-	-	-		-
Assessments	-	-	-	-	-	-	-	-	-		-
Accrued Vacation	-	-	-	-	-	-	-	-	-		-
Health/Disability Insurance	1,001	-	44,206	-	20,000	1,201	44,200	-	20,000		140,808
401K Payments	2,644	-	-	-	2,644	-	-	-	2,644		7,832
Total Payroll and Related	237,645	334,400	257,214	232,400	220,807	208,206	207,445	217,448	218,198		2,079,001
CO2E and Maintenance	2,500	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200		22,000
Originals Inventory	40,804	-	-	-	-	-	-	-	-		40,804
Maintenance	21,872	18,001	18,140	18,823	18,223	18,240	17,203	18,105	18,105		187,875
Other	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000		22,000
Other Operating Costs	82,000	81,104	81,708	81,708	81,707	82,203	82,203	82,203	82,203		822,000
Fuel (including O/M)	-	-	-	-	-	-	-	-	-		-
Salaries	28,104	28,075	184,701	184,000	20,075	20,075	20,075	22,200	22,200		1,022,816
Supplies	32,800	84,816	41,200	41,200	34,700	41,704	21,200	47,200	24,872		511,400
Tools/Mgmt Management Fee	14,200	14,201	8,227	8,227	8,227	8,227	8,227	8,227	8,227		82,200
Utilities	106,201	220,773	207,200	211,704	80,200	107,204	227,204	248,207	144,407		2,871,100
Total O&M and Other	878,200	1,040,000	827,400	886,827	1,007,202	844,204	797,200	940,275	826,200		7,261,271
TOTAL PRODUCTION OPERATIONS											
Administrative/Property/Other Operating Costs	-	-	-	-	-	-	-	-	-		1,822,816
Administrative/Other (Fuel/Feed)	-	-	-	-	-	-	-	-	-		100,000
Plant/Other (Fuel/Feed)	-	-	-	-	-	-	-	-	-		580,000
Unloading/Power/Other (Production)	-	-	-	-	-	-	-	-	-		400,000
Bedrock Fee	-	-	-	-	-	-	-	-	-		-
Other	-	-	-	-	-	-	-	-	-		-
TOTAL OTHERS (CLOSING ITEM)	-	-	-	-	-	-	-	-	-		2,802,816
TOTAL OPERATIONS (Fuel/Feed)	\$ 878,200	\$ 1,040,000	\$ 827,400	\$ 886,827	\$ 1,007,202	\$ 844,204	\$ 797,200	\$ 940,275	\$ 826,200	\$	\$ 7,261,271
Operating Costs Summary (Total)	\$ 371,207	\$ 620,773	\$ 772,218	\$ 760,206	\$ 802,202	\$ 728,106	\$ 722,197	\$ 797,200	\$ 822,206	\$	\$ 7,261,271
Operating Costs Summary (Total)	\$ 371,207	\$ 620,773	\$ 772,218	\$ 760,206	\$ 802,202	\$ 728,106	\$ 722,197	\$ 797,200	\$ 822,206	\$	\$ 7,261,271
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Operating Costs Summary (Total)	\$ 371,207	\$ 620,773	\$ 772,218	\$ 760,206	\$ 802,202	\$ 728,106	\$ 722,197	\$ 797,200	\$ 822,206	\$	\$ 7,261,271
Operating Costs Summary (Total)	\$ 371,207	\$ 620,773	\$ 772,218	\$ 760,206	\$ 802,202	\$ 728,106	\$ 722,197	\$ 797,200	\$ 822,206	\$	\$ 7,261,271
Operating Costs Summary (Total)	\$ 371,207	\$ 620,773	\$ 772,218	\$ 760,206	\$ 802,202	\$ 728,106	\$ 722,197	\$ 797,200	\$ 822,206	\$	\$ 7,261,271
Operating Costs Summary (Total)	\$ 371,207	\$ 620,773	\$ 772,218	\$ 760,206	\$ 802,202	\$ 728,106	\$ 722,197	\$ 797,200	\$ 822,206	\$	\$ 7,261,271
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Operating Costs Summary (Total)	\$ 371,207	\$ 620,773	\$ 772,218	\$ 760,206	\$ 802,202	\$ 728,106	\$ 722,197	\$ 797,200	\$ 822,206	\$	

Report of Cash, Growth, Inc.												
11/15/2011 - 11/15/2011												
11/15/2011 - 11/15/2011												
11/15/2011 - 11/15/2011												
Cash (Unapportioned)	831,200	804,300	804,307	1,100,827	1,071,130	918,207	1,002,370	682,227	382,170	17,970,200	17,970,200	17,970,200
Other	200,000	80,377	116,641	24,733	(18,100)	104,071	(24,111)	(20,000)	17,200,770	379,573	-	17,607,200
Cash Budget Balance	631,200	884,677	1,020,948	1,076,154	997,100	1,022,278	662,227	362,170	17,994,970	17,994,970	17,994,970	17,994,970
Beginning AP Balance	444,100	400,070	400,000	443,330	424,110	428,174	418,804	420,227	421,002	-	-	444,100
Payments	300,100	200,700	191,110	200,211	180,200	197,440	212,200	212,000	220,412	-	-	2,000,000
Payments	(251,857)	(200,200)	(200,210)	(200,200)	(181,200)	(200,200)	(200,200)	(200,200)	(200,200)	(200,200)	(200,200)	(200,200)
Ending AP Balance	494,243	400,000	443,330	443,110	423,714	418,004	418,804	420,227	421,002	-	-	444,100
Beginning State Tax Balance	413,200	915,000	624,200	642,100	400,000	470,700	600,270	427,200	200,117	-	-	413,200
State Tax Obligations Annual	101,100	100,200	72,000	71,000	74,000	74,000	80,270	71,000	84,200	-	-	700,000
State Tax Payments and Credits Applied to Current	-	-	(154,200)	(27,000)	(130,000)	(130,000)	(130,000)	(130,000)	(130,000)	(130,000)	(130,000)	(130,000)
Ending State Tax Balance	816,000	915,000	842,100	492,100	470,700	600,270	497,270	397,200	200,117	-	-	816,000
Beginning Production Pay Balance	1,000,000	1,100,000	1,137,200	1,100,000	1,270,000	1,200,000	1,407,200	1,201,000	1,000,000	-	-	1,000,000
Interest From	100,100	100,000	80,000	82,000	87,000	87,000	147,000	147,000	77,000	-	-	800,000
Payments	(6,100)	(100,000)	(80,000)	(82,000)	(87,000)	(87,000)	(147,000)	(147,000)	(77,000)	-	-	(800,000)
Beginning Production Pay Balance	1,100,000	1,100,000	1,100,000	1,270,000	1,200,000	1,407,200	1,201,000	1,000,000	1,000,000	-	-	1,100,000
Unapportioned Pay and Prof/Interest	(800,700)	(800,700)	(800,700)	(800,700)	(800,700)	(800,700)	(800,700)	(800,700)	(800,700)	(800,700)	(800,700)	(800,700)
CASH OUT - Pay/Prof Cash Out	800,700	700,000	800,700	800,700	971,300	1,407,200	600,300	600,300	600,300	600,300	600,300	600,300
Net Production Pay Balance	800,700	700,000	800,700	800,700	971,300	1,407,200	600,300	600,300	600,300	600,300	600,300	600,300

CONFIDENTIAL

Exhibit B

Appendix H

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

In re:	:	Chapter 11
	:	
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , ¹	:	Case No. 11-16155 (HJB)
	:	
Debtors.	:	Jointly Administered
	:	

**ORDER (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF ASSETS
FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES
PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (II) APPROVING
CERTAIN BIDDING PROTECTIONS, (III) APPROVING THE FORM AND MANNER
OF NOTICE OF THE SALE AND ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES
AND (IV) SCHEDULING AN AUCTION AND SALE HEARING**

Upon the motion (the "Motion")² of Massachusetts Elephant & Castle Group, Inc. and its debtor affiliates (collectively, the "Debtors"), for the entry of an order (the "Order") pursuant to sections 105, 363, 365 and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") and Rules 2002, 6004, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (i) approving bidding procedures for the sale of assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363 of the Bankruptcy Code ("Bid Procedures"), (ii) approving certain bidding protections, (iii) approving the form and manner of notice of the sale and assumption and assignment of executory contracts

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

² Capitalized terms used but not defined herein shall have the meanings ascribed such terms in the Motion.

and unexpired leases, (iv) scheduling an auction and sale hearing and (v) approving such sale; and any objections to entry of an order approving the Bid Procedures, the bidding protections and form and manner of notice of sale and scheduling an auction and sale hearing having been resolved, withdrawn or overruled; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the Motion is a core proceeding pursuant to 28 U.S. C. § 157; and adequate notice of the Motion and opportunity for objection having been given; and it appearing that no other or further notice need be given; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties-in-interest;

NOW THEREFORE IT IS HEREBY FOUND, CONCLUDED AND DETERMINED THAT:

- A. Notice of the hearing on the Motion and the Bid Procedures was provided to all necessary parties in interest and is otherwise adequate and appropriate in the circumstances.
- B. In the exercise of their business judgment, the Debtors have determined that the best method for maximizing the return to their creditors is, among other things, through a sale of substantially all of the Debtors' assets and the assumption and assignment of certain executory contracts and unexpired leases of the Business.
- C. In the exercise of their business judgment, the Debtors have agreed to sell certain of their assets (the "Assets") to the Stalking Horse Bidder pursuant to the Asset Purchase Agreement (the "APA"), a copy of which is attached to the Motion, subject to higher and better offers.

D. The Debtors will maximize the sale price of the Assets by seeking competitive bidders and holding an auction thereof (the "Auction") in accordance with the Bidding Procedures attached hereto as Exhibit 1.

E. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Assets and are in the best interests of the Debtors, their estates, creditors and other parties in interest.

F. All other findings made by the Court during the Bid Procedures hearing are incorporated herein by reference.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Bid Procedures attached hereto as Exhibit 1 are hereby approved, and the terms of the Bidding Procedures are incorporated by reference as if fully set forth herein. The Debtors are hereby authorized to obtain the highest and best bids for the Assets in accordance with the Bid Procedures. The failure to specifically include or reference any particular provision, section or article of the Bid Procedures in this Order shall not diminish or impair the effectiveness of such Bid Procedures, it being the intent of this Court that the Bid Procedures be authorized and approved in their entirety.

2. The Sale Notice substantially in the form attached hereto as Exhibit 2 is hereby approved. Upon entry of the Bid Procedures Order, the Debtors will serve within three business days copies of the Bid Procedures Order and Sale Notice (as defined below) upon: (a) the Office of the United States Trustee for the District of Massachusetts; (b) counsel to the Stalking Horse Bidder; (c) counsel for the Committee; (d) all known secured lenders and their counsel; (e) all known lien-holders and their counsel; (f) all known federal and state taxing authorities which have a reasonably known interest in the relief requested in this Motion; (g) all attorneys who

have entered their appearance in these cases; (h) and any party that has previously expressed an interest in the Assets; and (i) all parties specifically referenced in Section 8.3(k) of the APA.

3. Debtors shall serve within three business days a copy of the Sale Notice upon all other creditors and other persons entitled to notice under Bankruptcy Rule 2002(a).

4. The methods of notice described herein comply fully with Bankruptcy Rule 2002, Bankruptcy Rule 6004 and MLBR 6004-1 and constitute good and adequate notice of the proposed Bid Procedures and the sale of the Assets.

5. A Prospective Bidder (as defined in the Bid Procedures) that desires to make a Competing Offer (as defined in the Bid Procedures) is required to deliver written copies of its Competing Offer by facsimile and email to (a) counsel to the Debtors, (i) Eckert Seamans Cherin & Mellott, Two International Place, 16th Floor, Boston, MA 02110-2602 (Attn: John G. Loughnane, Esq.), (b) counsel to the Official Committee of Unsecured Creditors, Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Christine D. Lynch, Esq.); (c) counsel to the Secured Lender, Latham & Watkins, Wacker Drive Suite 5800, Chicago, Illinois 60606 (Attn: Richard Levy, Esq.) and McCarthy Terault, LLP; Suite 3000 421 7th Avenue SW, Calgary AB T2P 4K9 (Attn: Sean Collins, Esq.); (d) counsel to the Stalking Horse Bidder, Rothgerber, Johnson & Lyons, LLP, One Tabor Center, Suite 3000, 1200 Seventeenth Street, Denver, Colorado 80202 (Attn: Brent R. Cohen, Esq.) and Brown Rudnick, LLP, One Financial Center, Boston, MA 02111 (Attn: Jeffrey Jonas, Esq.); and (e) the Office of the United States Trustee for the District of Massachusetts John W. McCormack Post Office and Courthouse 5 Post Office Square, Suite 1000, Boston, MA 02109 (Attn: Jennifer L. Hertz, Esq.) (collectively, the "Notice Parties") no later than 4:30 pm (EST) on Friday January 20, 2012 (the "Bid Deadline").

6. If a Qualified Bid (as defined in the Bid Procedures) is received by the Debtors, the Auction will be conducted on Tuesday January 24, 2012 at _____(EST) before the Honorable Henry J. Boroff in the United States Bankruptcy Court, United States Bankruptcy Court, United States Courthouse, 300 State Street, Springfield, MA 01105 (the "Court"). If no Qualified Bids other than the bid by the Stalking Horse Bidder are received prior to the Bid Deadline, then, at the discretion of the Debtors, the Auction will be cancelled. The Stalking Horse Bidder is deemed to be a Qualified Bidder (as defined in the Bid Procedures). The Stalking Horse Bidder and the Debtors have confirmed that the "outside date" contained in Section 12.1(b) of the APA for the Closing to occur has been extended by mutual consent until February 3, 2012. Further, notwithstanding Section 8.2(a)(ii) of the APA, Purchaser acknowledges that the time period for the Sellers to seek to assume or reject Leases expires on January 24, 2012, provided that, at anytime prior to January 24, 2012, the Purchaser may direct the Sellers to request an extension of such period from the Court pursuant to Section 365(d)(4)(B)(ii) with respect to any Lease where the lessor has provided written consent for such relief.

7. Each Qualified Bidder participating in the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

8. A hearing to consider approval of the results of the Auction, or, if no Auction is held, the sale of the Assets to the Stalking Horse Bidder (the "Sale Hearing") will be held in the Court on Tuesday January 24, 2012 at ___ (EST). In the event there are no other Qualifying Bids, the Debtors shall accept the Stalking Horse Bidder's bid pursuant to the Asset Purchase Agreement.

9. If the Court (a) approves a competing transaction which the Debtors consummate or (b) confirms a plan pursuant to Section 1129 of the Bankruptcy Code, then the Debtors shall pay to the Stalking Horse Bidder \$500,000 as an expense reimbursement (the "Expense Reimbursement"), provided: (a) the Stalking Horse Bidder is not then in default under the APA and (b) the Stalking Horse Bidder has first submitted evidence of actual expenses incurred with the respect to its selection and status of Stalking Horse Bidder to the Court and the Office of the United States Trustee and obtained approval of the payment of the Expense Reimbursement from the Court. No competing transaction or, if applicable, plan shall be approved without GE CEF's consent. Nothing in this Order shall derogate from the Court's authority to determine whether a competing transaction or plan is higher or otherwise better or to approve any such higher or better transaction or plan. If applicable, the Debtors shall pay the Expense Reimbursement to the Stalking Horse Bidder (a) immediately upon the consummation of the competing transaction or (b) upon the effective date of a plan confirmed pursuant to Section 1129 of the Bankruptcy Code. Notwithstanding any other provision of the APA (including specifically Section 12.2(c)), the Stalking Horse Bidder shall not be entitled to any additional fee (including without limitation a fee based on a percentage of the total Cash Purchase Price) as a result of the consummation of a competing transaction or the confirmation of a plan pursuant to Section 1129 of the Bankruptcy Code.

10. Except as otherwise provided herein, any objection to the Motion shall be filed with the Court and served upon the Notice Parties so as to be received no later than 4:30 pm (EST) on Friday January 20, 2012 (the "Objection Deadline"). An objection shall set forth with particularity the grounds for such objection or other statements of position.

11. The Assumption and Assignment Notice substantially in the form attached hereto

as Exhibit 3, is hereby approved.

12. As soon as practicable after entry of this Order, the Debtors shall file a schedule of cure obligations (the "Cure Schedule") for all potentially Designated Contracts (as defined in the APA), which will include a description of the executory contract or unexpired lease, and set forth the cure cost (the "Cure Cost(s)") the Debtors believe is owed under each Designated Contract. The Debtors will serve the Assumption and Assignment Notice, together with the Cure Schedule, on each of the non-debtor parties listed on the Cure Schedule on the date that the Cure Schedule is filed with the Court, but not later than four business days after the entry of this Order.

13. Information concerning the Stalking Horse Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code will be provided to the non-debtor parties to the Designated Contracts upon written request to the Debtors' counsel and upon execution of a mutually acceptable confidentiality agreement. In the event that the Debtors propose to sell the Assets to a Purchaser who is not the Stalking Horse Bidder, adequate assurance information will be made available as soon as practicable after the conclusion of the Auction.

14. Any objection to the assumption and assignment of a Designated Contract (including, but not limited to, any objection relating to adequate assurance of future performance or to the Cure Costs set forth on the Cure Schedule) shall be in writing, filed with the Court and served on the Notice Parties so as to be actually received no later than the Objection Deadline; provided, however, that in the event that Auction results in a Successful Bidder other than the Stalking Horse Bidder, objections to the assignment of the Designated Contracts to the Successful Bidder on the basis of adequate assurance of future performance shall

be filed with the Court and served upon the Notice Parties so as to be received no later than the commencement of the Sale Hearing. An objection shall set forth with particularity the grounds for such objection or other statements of position, including, if applicable, the cure cost the objector asserts to be due, any pecuniary losses and the specific types and dates of alleged defaults.

15. If a non-debtor party to a Designated Contract fails to object to the Assumption and Assignment Notice in a timely manner and timely serve such objection, such party shall be forever barred from (i) contesting the assumption and assignment of such Designated Contract, (ii) asserting or claiming against the Debtors or the Successful Bidder that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Designated Contracts, or that there is any objection or defense to the assumption and assignment of such Designated Contracts, and (iii) disputing or otherwise asserting any cure cost other than as set forth in the Cure Notice, and the payment of the Cure Cost set forth in the Assumption and Assignment Notice shall be deemed to satisfy fully and completely the requirements of cure and compensation requisite to the Debtors' assumption and assignment of such Designated Contract.

16. If a non-debtor party to a Designated Contract files an objection to the proposed assumption and assignment, including an objection disputing the proposed Cure Cost, then to the extent that the parties are unable to consensually resolve the objection prior to the Sale Hearing, such objection will be determined at the Sale Hearing.

17. This Order shall be binding on the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

18. This Order shall constitute findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

19. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or otherwise, this Court, for good cause shown, orders that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

20. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: December 21, 2011

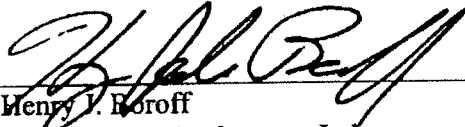

Henry J. Boroff
United States Bankruptcy Judge

EXHIBIT 1

Bidding Procedures

BIDDING PROCEDURES

On November 18, 2011, Massachusetts Elephant & Castle Group, Inc., Elephant and Castle of Pennsylvania, Inc., E&C Pub, Inc., Elephant & Castle Inc. (Washington), Elephant & Castle (Chicago) Corporation, Elephant & Castle East Huron, LLC, E&C Capital, LLC, Elephant & Castle Illinois Corporation, E&C Eye Street, LLC, Elephant & Castle International, Inc., Elephant & Castle Pratt Street, LLC, Elephant & Castle Group Inc., Elephant & Castle Canada Inc. and Repechage Investments Limited, Elephant & Castle, Inc. (Texas) (collectively, the "Debtors"), filed a motion (the "Motion") for orders (i) approving bidding procedures for the sale of assets free and clear of all liens, claims, interests and encumbrances pursuant to section 363 of the Bankruptcy Code ("Bid Procedures"), (ii) approving certain bidding protections, (iii) approving the form and manner of notice of the sale and assumption and assignment of executory contracts and unexpired leases, (iv) scheduling an auction and sale hearing and (v) approving such sale. The Debtors (other than Repechage Investments Limited) have agreed to sell substantially all of their assets to the Stalking Horse Bidder pursuant to the terms of a certain Asset Purchase Agreement dated as of November 18, 2011 (the "APA"), subject to Bankruptcy Court approval and subject to higher and better offers. A copy of the APA is available on claims agent's website at www.epiq11.com. Capitalized terms used herein not otherwise defined have the meaning set forth in the APA as modified by the Court Order dated _____, 2012 approving these Bidding Procedures ("Bidding Procedures Order").

The following procedures (the "Bid Procedures") shall govern the auction process by which the Debtors will accept and consider higher and better offers for the Purchased Assets (as defined in the APA). Nothing in these Bid Procedures shall constitute the consent of the Committee or GE Canada Equipment Financing, G.P. (the "Secured Lender") to any bid:

1. Any party desiring to become a prospective bidder ("Prospective Bidder") for the Purchased Assets shall deliver (unless previously delivered) to the Debtors, on or before January 20, 2012 at 4:30 pm (the "Bid Deadline"), a signed confidentiality agreement in form and substance satisfactory to the Debtors (the "Confidentiality Agreement") and, upon request of the Debtors, a financial statement or other indicia of financial ability reasonably satisfactory to the Debtors (the "Financials").
2. After a Prospective Bidder delivers the Confidentiality Agreement and, if requested, the Financials, the Debtors will deliver or make available (unless previously delivered or made available) to each Prospective Bidder certain designated information and financial data with respect to the Assets.
3. Any bid by a Prospective Bidder (each a "Competing Offer") shall:
 - a) be in writing and delivered by facsimile and email to: (a) counsel to the Debtors, (i) Eckert Seamans Cherin & Mellott, Two International Place, 16th Floor, Boston, MA 02110-2602 (Attn: John G. Loughnane, Esq.), (b) counsel to the Official Committee of Unsecured Creditors, Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Christine D. Lynch, Esq.); and (c) counsel to the Secured

Lender, Latham & Watkins, Wacker Drive Suite 5800, Chicago, Illinois 60606 (Attn: Richard Levy, Esq.) and McCarthy Terault, LLP; Suite 3000 421 7th Avenue SW, Calgary AB T2P 4K9 (Attn: Sean Collins, Esq.);

- b) exceed the sum of (i) the Purchase Price, plus (ii) the Expense Reimbursement (as defined in the Bidding Procedures Order);
 - c) be accompanied by a signed asset purchase agreement in the form of the APA, together with a marked copy showing all changes to the APA, which changes shall not be less favorable to the Debtors and their estates in any material respect;
 - d) not be subject to, or conditioned on, any contingency or condition, including without limitation, the outcome of unperformed due diligence by the bidder or upon any financing contingency;
 - e) be irrevocable until the earlier to occur of (i) the Closing Date, or (ii) for sixty (60) days following entry of the Sale Order;
 - f) be submitted with a cash deposit equal to 10% of the purchase price offered in the Competing Offer (the "Deposit") in the form of a wire transfer or a certified check made payable to the Debtors and sent to the Debtors' counsel, which Deposit shall be non-refundable if the Court approves the sale of the Debtors' assets to such Prospective Bidder;
 - g) be substantially on the same or better terms and conditions as set forth in the APA; and
 - h) be submitted with evidence substantially equivalent to that provided by the Stalking Horse Bidder establishing to the satisfaction of the Debtors, in consultation with the Committee and Secured Lender, that such Prospective Bidder or an entity that has executed a written guarantee of such Prospective Bidder's bid has readily available funds sufficient to enable it to timely consummate its Competing Offer and provide all non-debtor parties to those executory contracts and unexpired leases to be assumed and assigned with adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code.
4. Competing Offers that the Debtors, in consultation with the Committee and Secured Lender, determine satisfy the provisions set forth above shall be deemed "Qualified Bids" and any party submitting such Qualified Bid shall be designated as a "Qualified Bidder." The Stalking Horse Bidder is a Qualified Bidder. A Qualified Bid will be valued by the Debtors based upon any and all factors that the Debtors deem pertinent, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating a transaction with the Qualified Bidder, (c) any excluded assets or executory contracts or unexpired leases, and (d) any other factors that the Debtors may deem relevant to the Sale in consultation with the Committee and Secured Lender.

5. If no Qualified Bids other than the bid by the Stalking Horse Bidder are received, the Debtors will report the same to the Court, and the Debtors shall proceed to seek court approval of the APA with the Stalking Horse Bidder.

6. In the event that one or more Qualified Bid has been received, the Debtors will conduct the Auction for the sale of the Assets. The Auction will take place on January 24, 2012 at _____(EST) before the Honorable Henry J Boroff in the United States Bankruptcy Court, United States Courthouse, 300 State Street, Springfield, MA 01105. . Only the Stalking Horse Bidder, Qualified Bidders and the Secured Lender are eligible to participate and make any subsequent bids at the Auction. At the Auction, bidding will commence at the amount of the aggregate consideration for the Assets and on the terms proposed in the Qualified Bid that the Debtors, in consultation with the Committee and the Secured Lender, select as the highest and best offer prior to the Auction unless the Court orders otherwise. Bidding will continue until such time as the highest and best offer is determined by the Debtors in consultation with the Committee and Secured Lender unless the Court orders otherwise (the "Successful Bid," and the party submitting such Successful Bid being designated the "Successful Bidder").

7. The Debtors, after consultation with the Committee and Secured Lender, may announce at the Auction additional rules or procedures for conducting the Auction so long as such rules are not inconsistent with the Bid Procedures including without limitation the addition of minimum bid increments unless the Court orders otherwise.

8. The Debtors reserve the right, after consultation with the Committee and Secured Lender, and unless the Court orders otherwise to (i) determine, at their discretion, which bid, if any, is the highest and best offer, taking into consideration, *inter alia*, that the Expense Reimbursement would be payable if a party other than the Stalking Horse Bidder is the Purchaser, (ii) reject any bid that the Debtors deem to be inadequate, insufficient or otherwise unsatisfactory, and/or (iii) adjourn the Auction by announcing such adjournment at the Auction. The Debtors' presentation to the Court for approval of the selected bid as the Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Court at the Sale Hearing.

9. All bidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and to have waived any right to a jury trial in connection with any disputes relating to the Auction and the sale of the Purchased Assets.

10. If, for any reason, the Successful Bidder fails to close on the purchase of the Purchased Assets (and assuming that the conditions to closing have been satisfied), then: (i) the Successful Bidder shall forfeit the Deposit and be subject to such other rights and remedies as the Debtors may have for such failure; (ii) the Qualified Bidder who, as of the conclusion of the Auction, has made the second and the next highest and best bid (as determined by the Debtors in consultation with the Committee and Secured Lender) automatically will be deemed to have submitted the highest and best bid without further order of the Bankruptcy Court (such bidder, the "Alternate Bidder"); and (iii) the Alternate Bidder will be required to proceed as the purchaser at closing and its bid will be treated as the Successful Bid without further order of the Bankruptcy Court.

EXHIBIT 2

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

	:	Chapter 11
	:	
In re:	:	Case No. 11-16155 (HJB)
	:	
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , ³	:	Jointly Administered
	:	
Debtors.	:	
	:	

NOTICE OF INTENDED PUBLIC SALE OF ESTATE PROPERTY

JANUARY 24, 2012 IS THE DATE OF THE PROPOSED SALE

**JANUARY 20, 2012 _____ IS THE DATE BY WHICH OBJECTIONS
MUST BE MADE**

**JANUARY 20, 2012 IS THE DEADLINE TO SUBMIT A BID FOR THE
PROPERTY (A "COMPETING OFFER")**

NOTICE is hereby given, pursuant to 11 U.S.C. § 363, Fed. R. Bankr. P. 2002(a)(2) and 6004, and MLBR Rule 2002-5 and 6004-1, that the Debtors intend to sell at public sale the Debtors' right, title and interest in substantially all of the property of the estate consisting of:

PROPERTY TO BE SOLD: Substantially all of the personal property, leased real estate, equipment, contracts, licenses, permits and intellectual property associated with the operation of certain restaurants commonly known as Elephant & Castle.⁴

QUALIFIED BIDS: Competing Offers must be submitted according to the Bid Procedures Order entered by the Bankruptcy Court on December __, 2011 in order to be considered a Qualified Bid. A copy of the Bid Procedures Order is available at no charge upon request from the undersigned or on the website of the court: www.mab.uscourts.gov.

³ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

⁴ The assets to be sold consist of assets of each Debtor other than Repechage International Limited.

THE AUCTION: In the event that one or more Qualified Bids are received, an auction will be conducted by the Honorable Henry J Boroff, United States Bankruptcy Judge, United States Bankruptcy Court, United States Bankruptcy Court, United States Courthouse, 300 State Street, Springfield, MA 01105 (the "Bankruptcy Court") on January 24, 2012 at __ (EST)

The proposed sale procedures are more particularly described in the Debtors' Motion for an Order (A) Authorizing and Approving Bidding Procedures; (B) Scheduling a Hearing to Consider the Sale of Substantially All of the Debtors' Assets; (C) Prescribing the Manner and Notice of the Sale Hearing; (D) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (E) Authorizing the Assumption and Assignment of Certain Executory Contracts; and (F) Granting Other Related Relief (the "Sale Motion"), a copy of which is available at no charge upon request from the undersigned or on the website of the court: www.mab.uscourts.gov.

SALE FREE AND CLEAR OF LIENS: The property will be sold free and clear of all liens, claims and encumbrances. Any perfected, enforceable valid liens shall attach to the proceeds of the sale according to priorities established under applicable law.

OBJECTIONS: Any objections to the sale must be filed in writing with the Clerk of the Bankruptcy Court on or before January 20, 2012 at 4:30 pm. A copy of any objection also shall be served upon the undersigned and additional parties as set forth in the Bid Procedures Order. Any objection to the sale must state with particularity the grounds for the objection and why the intended sale should not be authorized. Any objection to the sale shall be governed by Fed. R. Bankr. P. 9014.

HEARING: A hearing on objections and the Sale Motion is scheduled to take place before the Honorable Henry J Boroff at the Bankruptcy Court on January 20, 2012 at 4:30 pm. . Further terms and conditions of the sale may be determined at the hearing. Any party who has filed an objection is expected to be present at the hearing, failing which the objection may be overruled. Evidence may be taken at the hearing to resolve issues of fact. If no objection to the Sale Motion is timely filed, the Bankruptcy Court, in its discretion, may cancel the scheduled hearing and approve the sale without a hearing.

Respectfully submitted,

Dated: December __, 2011

ECKERT, SEAMANS, CHERIN &
MELLOTT, LLC

/s/ John G. Loughnane
John G. Loughnane (BBO No. 557599)
Two International Place, 16th Floor
Boston, MA 02110-2602
Tel: (617) 342-6800
Fax: (617) 342-6899
Email: jloughnane@eckertseamans.com

COUNSEL TO THE DEBTORS

EXHIBIT 2

Assumption and Assignment Notice

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

	:	Chapter 11
In re:	:	
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , ⁵	:	Case No. 11-16155 (HJB)
Debtors.	:	Jointly Administered
	:	

**NOTICE OF PROPOSED ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS**

PLEASE TAKE NOTICE that on November 18, 2011, the above captioned debtors (the "Debtors"), filed the:

Debtors' Motion for an Order (A) Authorizing and Approving Bidding Procedures; (B) Scheduling a Hearing to Consider the Sale of Substantially All of the Debtors' Assets; (C) Prescribing the Manner and Notice of the Sale Hearing; (D) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (E) Authorizing the Assumption and Assignment of Certain Executory Contracts; and (F) Granting Other Related Relief (the "Motion").

PLEASE TAKE FURTHER NOTICE that, among other things, the Motion seeks approval of the Asset Purchase Agreement between the Debtors and Original Joe's Acquisition Corporation ("Original Joe's") dated November 18, 2011 (the "APA"), pursuant to which the Debtors propose to sell all of their right, title and interest in substantially all of their assets, including personal property, leased real estate, equipment, contracts, licenses, permits and intellectual property associated with the operation of certain restaurants commonly known as Elephant & Castle (collectively, the "Assets")⁶, and to assume and assign certain executory contracts and unexpired leases (the "Designated Contracts") to Original Joe's or an alternative successful bidder free and clear of all liens, claims, encumbrances and interests, all as more fully set forth in the APA, subject to higher and better offers in accordance with the Bid Procedures Order and Bankruptcy Court approval. The Motion, APA and Bid Procedures Order are available upon request from the undersigned.

⁵ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

⁶ The term "Assets" does not include any assets or any other interests of Repechage Investments Limited.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Motion, the APA and the Bid Procedures Order, the Debtors hereby provide notice of their intent to assume and assign the Designated Contracts identified on Exhibit A hereto, and to assign such Designated Contracts to Original Joe's in connection with the proposed sale and in accordance with the terms of the APA. Pursuant to the APA, Original Joe's shall pay any cure costs associated with the Designated Contracts, which are to be assumed and assigned as a condition of the closing of the APA.

PLEASE TAKE FURTHER NOTICE that objections ("Cure Objection"), if any, to the proposed assumption and assignment of any Designated Contract to Original Joe's or another bidder providing a higher or otherwise better offer, or to the amount of the cure amount determined by the Debtors, as set forth on Exhibit A hereto, or to otherwise assert that any amounts, defaults, conditions or pecuniary losses must be cured or satisfied under any of the Designated Contracts (including accrued but not yet due obligations) in order for such contract to be assumed and/or assigned must be made in writing, filed with Clerk, United States Bankruptcy Court, John W. McCormack Post Office and Court House, 5 Post Office Square, Suite 1150, Boston, MA 02190-3945, must be served, so as to be received no later than January 20, 2012 at 4:30 pm (EST) (the "Objection Deadline") upon (a) counsel to the Debtors, (i) Eckert Seamans Cherin & Mellott, Two International Place, 16th Floor, Boston, MA 02110-2602 (Attn: John G. Loughnane, Esq.), (b) counsel to the Official Committee of Unsecured Creditors, Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110 (Attn: Christine D. Lynch, Esq.); (c) counsel to the Secured Lender, Latham & Watkins, Wacker Drive Suite 5800, Chicago, Illinois 60606 (Attn: Richard Levy, Esq.) and McCarthy Terault, LLP; Suite 3000 421 7th Avenue SW, Calgary AB T2P 4K9 (Attn: Sean Collins, Esq.); (d) counsel to the Stalking Horse Bidder, Rothgerber, Johnson & Lyons, LLP, One Tabor Center, Suite 3000, 1200 Seventeenth Street, Denver, Colorado 80202 (Attn: Brent R. Cohen) and Brown Rudnick, LLP, One Financial Center, Boston, MA 02111 (Attn: Jeffrey Jonas); and (e) the Office of the United States Trustee for the District of Massachusetts. All Cure Objections must set forth with specificity any and all cure obligations or conditions which such party asserts must be cured or satisfied with respect to such assigned contract. Cure Objections shall set forth the cure amount that the objector asserts is due, the specific types and dates of the alleged defaults, pecuniary losses and conditions to assignment, and the support therefore and all other objections to assumption and assignment.

PLEASE TAKE FURTHER NOTICE that unless a Cure Objection is filed and served by a party to a Designated Contract, or a party interested in a Designated Contract, by the Objection Deadline, all interested parties who have received actual notice of the proposed assumption and assignment of such contract shall be deemed to have waived and released any right to assert a Cure Objection and to have otherwise consented to the assignment, and shall be forever barred and estopped from asserting or claiming against the Debtors, the purchaser or any other assignee of the relevant assigned contract that additional amounts are due or defaults exist, or conditions to assignment must be satisfied, under the Designated Contract.

PLEASE TAKE FURTHER NOTICE that hearings with respect to Cure Objections will be held during the Sale Hearing on January 24, 2012, or at such other date as the Court may designate, provided that if the subject Designated Contract is assumed and assigned, the cure amount asserted by the objecting party (or such lower amount as may be fixed by the Court) shall be deposited with and held in a segregated account by the Debtors or such other person as the Court may direct pending further order of the Court or mutual agreement of the parties.

PLEASE TAKE FURTHER NOTICE that under certain circumstances as set forth in the APA, Original Joe's may elect not to take assignment of certain contracts and your receipt of this notice shall not be deemed to bind the purchaser to take assignment of the contract to which you are a party. In addition, the Debtors reserve the right to reject any contracts which are not assumed and assigned to the purchaser.

PLEASE TAKE FURTHER NOTICE that upon assignment, the Designated Contracts shall be transferred to, and remain in full force and effect for the benefit of the assignee in accordance with their respective terms, notwithstanding any provision in such Designated Contract which prohibits, restricts or conditions such assignment or transfer. Upon assignment, the assignee is assuming all liabilities arising under the Designated Contract on or after the effective date of assignment and the Debtors and their estates shall be relieved from any liability for any breach of any Designated Contract after such assignment to and assumption by the assignee on such date.

Any questions concerning the intended sale shall be addressed to the undersigned.

Dated: December __, 2011

ECKERT, SEAMANS, CHERIN &
MELLOTT, LLC

/s/ John G. Loughnane

John G. Loughnane (BBO No. 557599)
Two International Place
16th Floor
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COUNSEL TO THE DEBTORS

Appendix I

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

In re)	
MASSACHUSETTS ELEPHANT &)	Chapter 11
CASTLE GROUP, INC., et al.)	Case No. 11-16155-HJB
Debtors.)	Jointly administered

**MOTION OF DAVID DOBBIN FOR LEAVE TO CONDUCT
RULE 2004 EXAMINATION OF GE CANADA EQUIPMENT FINANCING G.P.
AND ORIGINAL JOE'S ACQUISITION CORP.
(Emergency Relief Requested)**

Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, David Dobbin, the principal shareholder of Massachusetts Elephant & Castle Group, Inc., moves for leave to conduct the examination of GE Canada Equipment Financing G.P. ("GE CEF") and Original Joe's Acquisition Corp., the "stalking horse bidder" designated in connection with the auction sale of the Debtors' assets (the "Stalking Horse Bidder"); and, in connection therewith, to issue a subpoena to (i) compel their respective attendance at such examinations at a time and place to be determined by Mr. Dobbin and to (ii) produce the documents identified on Schedule A hereto.

In light of the fact that the hearing on the Debtors' motion to sell substantially all of its assets to the Stalking Horse Bidder (the "Sale Hearing") is scheduled for January 24, 2012, Mr. Dobbin requests that this Motion be heard on or before the Sale Hearing takes place.

As grounds for this motion, Mr. Dobbin states as follows:

1. On June 28, 2011, the Debtors filed voluntary petition for relief under Chapter 11

of the United States Bankruptcy Code.

01/23/2012 DENIED. THE MOVANT HAS FAILED TO DEMONSTRATE GOOD CAUSE FOR THE EXAMINATION. FIRST, THE MOTION IS UNTIMELY IN LIGHT OF THE SALE SCHEDULED FOR TOMORROW, JANUARY 24, 2012. SECOND, THE INFORMATION REQUESTED APPEARS OVERBROAD IN SCOPE AND WOULD SURELY DELAY THE SALE. THIRD, THE MOTION FAILS TO SUFFICIENTLY SET FORTH ANY UNLAWFUL CONDUCT BY GE CEF OR THE STALKING HORSE BIDDER WHICH WOULD SERVE AS A BASIS FOR THE RELIEF SOUGHT. FOURTH, A FISHING EXPEDITION ON BEHALF OF A COUNTER-OFFEROR WHICH WOULD SERVE TO DELAY A COURT-ORDERED SALE OF THIS SIZE WOULD BE INAPPROPRIATE UNDER THE CIRCUMSTANCES AND NOT IN THE BEST INTEREST OF THE BANKRUPTCY ESTATE. AND FIFTH, THE MOVANT'S STANDING TO REQUEST THE EXAMINATION IS SUSPECT.

Appendix J

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

	:	Chapter 11
In re:	:	
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC., <i>et al.</i> , ¹	:	Case No. 11-16155 (HJB)
Debtors.	:	Jointly Administered
	:	

**ORDER (A) APPROVING ASSET PURCHASE AGREEMENT BETWEEN
THE DEBTORS AND OJAC; (B) AUTHORIZING THE SALE OF THE ASSETS OF
THE DEBTORS FREE AND CLEAR OF ALL LIENS, CLAIMS, AND INTERESTS;
AND (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH**

Upon the motion (the "Motion") of Massachusetts Elephant & Castle Group, Inc. and its debtor affiliates (collectively, the "Debtors"), for the entry of an order (the "Order") pursuant to Bankruptcy Code sections 105(a), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014 (a) approving an asset purchase agreement (the "APA") between the Debtors and Original Joe's Acquisition Corporation ("OJAC") to acquire Debtors' assets and operations used in the conduct of, or related to, owning, managing, operating, and franchising restaurants operated by Debtors (as defined in the APA, the "Assets")², a copy of which is attached as an exhibit to the Motion; (b) authorizing the sale of the Assets free and clear of Liens (as defined in the APA), Claims (as defined in Section 101(5) of the Bankruptcy Code) and interests; and (c)

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The Debtors' corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

² The term "Assets" does not include any assets or any other interests of Repechage Investments Limited.

authorizing the assumption and assignment of executory contracts and unexpired leases (the "Designated Contract(s)", as defined in the Motion) to OJAC; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and after due deliberation thereon after notice and hearing as appropriate under the circumstances; and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS THAT:

Jurisdiction, Final Order, and Statutory Bases

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

C. The statutory predicates for the relief requested in the Motion are Bankruptcy Code sections 105(a), 363(b), (f), and (m), and 365 and Bankruptcy Rules 2002(a)(2), 6004(a), (b), (c), (e), (f), and (h), 6006(a), (c), and (d), 9007, and 9014.

D. This Court entered the Order (A) Approving Bidding Procedures for the Sale of Assets Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to Section 363 of the Bankruptcy Code; (B) Approving Certain Bidding Protections, (C) Approving the Form

and Manner of Notice of the Sale and Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Scheduling an Auction and Sale Hearing (the "Bid Procedures Order").

Notice

E. Actual written notice of the Sale Hearing³, the Auction, the Motion, the sale of the Assets, and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all known interested entities, including, but not limited to the following parties:

- (i) the Office of the United States Trustee for the District of Massachusetts;
- (ii) counsel to the Committee;
- (iii) all known secured lenders (the "Secured Lenders");
- (iv) all known lien-holders;
- (v) all known federal and state taxing authorities which have a reasonably known interest in the relief requested in the Motion;
- (vi) any party that has previously expressed an interest in the Assets;
- (vii) all other creditors and other persons entitled to notice under Bankruptcy Rule 2002(a);
- (viii) all current employees of the Debtors and former employees who were employed within the last twenty-four months;
- (ix) all current and former franchisees of the Debtors;
- (x) all parties referenced in Section 8.3(k) of the APA; and
- (xi) all entities who have filed with the Court a request for notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties").

³ Undefined, capitalized terms shall have the same meaning as is ascribed in the Motion or APA.

F. In accordance with the provisions of the Bid Procedures, the Debtors have served notice upon the counterparties to Designated Contracts: (i) that the Debtors seek to assume and assign certain Designated Contracts by the closing date of the Sale (the "Closing Date"); and (ii) of the relevant Cure Obligations (as defined in the APA). The service of such notice was good, sufficient, and appropriate under the circumstances and no further notice need be given in respect of establishing the Cure Obligations for the Designated Contracts. Each of the counterparties to the Designated Contracts (collectively, the "Contract Counterparties") have had an opportunity to object to the Cure Obligations set forth in the notice.

G. As evidenced by the affidavits of service previously filed with this Court, proper, timely, adequate, and sufficient notice of the Motion, the Auction, the Sale Hearing, and APA has been provided in accordance with Bankruptcy Code sections 102(1), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, and 9014. The Debtors also have complied with all obligations to provide notice of the Motion, the Auction, the Sale Hearing, and the APA required by the Bid Procedures Order. The notices described above were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Auction, the Sale Hearing, or the APA is required.

H. The disclosures made by the Debtors concerning the APA, the Auction and the Sale Hearing were good, complete, and adequate.

Good Faith of OJAC

I. OJAC is not an "insider" of any of the Debtors, as defined in Bankruptcy Code section 101(31).

J. OJAC is purchasing the Assets in good faith and is a good faith buyer within the meaning of Bankruptcy Code section 363(m). OJAC is, therefore, entitled to the full protections

of section 363(m) and has proceeded in good faith in all respects in connection with this proceeding in that, among other things: (i) OJAC complied with the provisions in the Bid Procedures Order; (ii) all payments to be made by OJAC and other agreements or arrangements entered into by OJAC in connection with the APA have been disclosed; (iii) OJAC has not violated Bankruptcy Code section 363(n) by any action or inaction; (iv) no common identity of directors or controlling stockholders exists between OJAC and any of the Debtors; and (v) the APA was negotiated at arms'-length and in good faith.

Highest and Best Offer

K. The Debtors conducted an auction process in accordance with, and have otherwise complied in all respects with, the Bid Procedures Order. The auction process set forth in the Bid Procedures Order and the Bid Procedures afforded a full and fair-opportunity for any entity to make a higher or otherwise better offer to purchase the Assets. The auction process was duly noticed and conducted in a non-collusive, fair, and good faith manner, and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Assets.

L. The APA constitutes the highest and best offer for the Assets and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the APA constitutes the highest and best offer for the Assets constitutes a reasonable exercise of the Debtors' business judgment.

M. The APA represents a fair and reasonable offer to purchase the Assets under the circumstances of these chapter 11 cases. No other entity or group of entities has offered to purchase the Assets for greater economic value to the Debtors' estates than OJAC.

N. Approval of the Motion and the APA and the consummation of the transactions

contemplated thereby is in the best interests of the Debtors, their creditors, their estates, and all other parties-in-interest.

O. The Debtors have demonstrated compelling circumstances and a good and sufficient business purpose and justification for the Sale.

No Fraudulent Transfer

P. The consideration provided by OJAC pursuant to the APA is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, and the District of Columbia.

Q. OJAC is not a mere continuation of the Debtors or their estates, and there is no continuity between OJAC and the Debtors. OJAC is not holding itself out to the public as a continuation of the Debtors. OJAC is not a successor to the Debtors or their estates, and the transactions contemplated by the APA do not amount to a consolidation, merger, or de facto merger of OJAC and the Debtors. Except to the extent set forth in the APA, OJAC is not liable as a successor under any theory of successor liability for Liens, Claims, and interests that encumber or relate to the Assets.

Validity of Transfer

R. The Debtors have full corporate power and authority to execute and deliver the APA and all other documents contemplated thereby, and no further consents or approvals are required for the Debtors to consummate the transactions contemplated by the APA, except as otherwise set forth in the APA.

S. The transfer of each of the Assets to OJAC will be, as of the Closing Date, a legal, valid, and effective transfer of such assets, and each such transfer vests or will vest OJAC with

all right, title, and interest of the Debtors to the Assets free and clear of all Liens, Claims, and interests accruing, arising, or relating thereto any time prior to the Closing Date, except for any Designated Contracts (as defined in APA) under the APA.

Satisfaction of Section 363(f)

T. OJAC would not have entered into the APA and would not consummate the transactions contemplated thereby if the sale of the Assets to OJAC, and the assumption, assignment, and sale of the Designated Contracts to OJAC, were not free and clear of all Liens, Claims, and interests of any kind or nature whatsoever (except Designated Contracts) including, but not limited to, (i) any employment or labor agreements (except Designated Contracts related to the Debtors' location in San Diego, California); (ii) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of the Debtors; (iii) any other employee, worker's compensation, occupational disease, or unemployment or temporary disability related Claim, including without limitation Claims that might otherwise arise under or pursuant to (a) the Employee Retirement, Income, Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967, and (h) the Consolidated Omnibus Budget Reconciliation Act of 1986; (iv) environmental Claims or Liens arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous toxic, polluting, or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* or similar state statute, (v) any bulk sales or similar law; and (vi) any

tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended.

U. The Debtors may sell the Assets free and clear of all Liens, Claims, and interests against the Debtors, their estates, or any of the Assets (except for Designated Contracts) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. The Secured Lenders have expressly consented to the sale of the Assets as and to the extent provided in this Order, free and clear of all Liens, Claims, and interests against the Debtors, their estates, or any of the Assets held by, maintained by or otherwise in favor of the Secured Lenders, and the Secured Lenders waive all claims and objections that could be raised now or in the future with respect to the transactions set forth in the APA. Those holders of Liens, Claims, and interests against the Debtors, their estates, or any of the Assets who did not object, or who withdrew their objections, to the APA or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Liens, Claims, and interests who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having their Liens, Claims, and interests, if any, in each instance against the Debtors, their estates, or any of the Assets, attach to the net cash proceeds of the Sale attributable to the Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force, and effect that such creditor had prior to the transactions, and subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

V. The transfer of the Assets to OJAC free and clear of all Liens, Claims, and interests, if any, will not result in any undue burden or prejudice to any holders of any Liens, Claims, and interests, if any, as all such Liens, Claims, and interests of any kind or nature

whatsoever shall attach, except as otherwise provided in this Order, to the net proceeds of the sale of the Assets received by the Debtors in the order of their priority, with the same validity, force and effect which they now have as against the Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto and subject to the Carve Outs described in paragraph 26 below. All persons having Liens, Claims, and interests of any kind or nature whatsoever against or in any of the Debtors or the Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Liens, Claims, and interests, if any, against OJAC, any of their assets, property, successors or assigns, or the Assets.

Assumption and Assignment of Designated Contracts

W. The assumption and assignment of the Designated Contracts pursuant to the terms of this Order is integral to the APA, is in the best interests of the Debtors and their estates, creditors, and other parties in interest, and represents a reasonable exercise of the Debtors' business judgment.

X. The Debtors properly served each Counterparty with notice of their Cure Obligation either by way of the Notice of Proposed Assumption and Assignment of Executory Contracts (the "First Cure Notice") or the Supplemental Notice of Proposed Assumption and Assignment of Executory Contracts (the "Second Cure Notice" and together with the First Cure Notice, the "Cure Schedules"). After being served with the Cure Schedules, the following lease Counterparties filed an objection to the assumption and assignment of their lease contract or to the sale, with all such objections being either resolved or overruled as noted in Paragraph 16 below:

(i) D.C. One Associates filed a Limited Objection to an Order Authorizing the Assumption and Assignment of Certain Executory Contracts;

(ii) Presidential Plaza, L.P filed a Limited Objection to Adequate Assurance of Future

Performance Pursuant to Order (I) Approving Bidding Procedures for the Sale of Assets Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to Section 363 of the Bankruptcy Code, (II) Approving Certain Bidding Protections, (III) Approving the Form and Manner of Notice of the Sale and Assumption and Assignment of Executory Contracts and Unexpired Leases and (IV) Scheduling an Auction and Sale Hearing;

(iii) BHR Operations, LLC filed a Limited Objection to: (1) Debtors' Motion to (A) Sell Substantially All Assets Outside the Ordinary Course of Business; And (B) Assume and Assign Certain Executory Contracts and Leases; and (2) Notice of Proposed Assumption and Assignment of Executory Contracts; and

(iv) 212 King West Holdings Inc. filed an Objection to Cure Amount and Limited Objection to Assumption and Assignment of Lease.

Y. The Cure Obligations (or, where applicable, the Cure Obligations as revised below) in the Cure Schedules are the sole amounts necessary under Bankruptcy Code sections 365(b)(1)(A) and (B) and 365(f)(2)(A) or, are the amounts agreed to by certain parties as part of an agreement reached or settlement and compromise as noted below in paragraph 16, to cure all monetary defaults and pay all actual pecuniary losses under the Designated Contracts, subject to OJAC's right to remove any Designated Contracts from the list of Designated Contracts as provided in the APA. Attached as Exhibit A to this Sale Order is a schedule (the "Revised Cure Schedule") comparing both the Cure Obligation originally associated with Debtors' nonresidential real property leases that are being assumed and assigned along with the revised Cure Obligation, where applicable. The revised Cure Obligations were determined after reviewing those objections filed by those Counterparties listed above or after negotiations regarding the Cure Obligation were concluded with certain Counterparties.

Z. On or before the Closing Date, for all Designated Contracts assumed and assigned to OJAC, the Buyer shall have paid the Cure Obligations or revised Cure Obligation, where applicable. OJAC has also provided adequate assurance of its future performance under such Designated Contracts within the meaning of Bankruptcy Code sections 365(b)(1)(C) and

365(f)(2)(B).

Compelling Circumstances for Immediate Sale

AA. To maximize the value of the Assets and preserve the viability of the business to which the Assets relate, it is essential that the closing of the Sale occur within the time constraints set forth in the APA. Time is of the essence in consummating the transactions set forth in the APA.

BB. Given all of the circumstances of these chapter 11 cases and the adequacy and fair value of the purchase price under the APA, the transactions constitute a reasonable exercise of the Debtors' business judgment and should be approved.

CC. The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, Bankruptcy Code sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f), and all of the applicable requirements of such sections have been complied with in respect of the transactions.

AND THE COURT HEREBY ORDERS THAT:

General Provisions

1. The relief requested in the Motion is GRANTED. The transactions contemplated by the Motion and the APA are approved as set forth in this Order.
2. This Court's findings of fact and conclusions of law in the Bid Procedures Order are incorporated herein by reference.
3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to this Court at the Sale Hearing or by stipulation filed with this Court or as otherwise provided in this Order, and all reservations of rights included therein, are hereby overruled on the merits.

Approval of Purchase Agreement

4. The APA and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved.

5. Pursuant to section 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized, empowered and ordered to take any and all actions necessary or appropriate to (a) consummate the Sale pursuant to and in accordance with the terms and conditions of the APA, (b) close the Sale as contemplated in the APA and this Order, and (c) execute and deliver, perform under, consummate, implement, and close the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the transactions contemplated thereby, including any other ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA and such other ancillary documents.

6. This Order shall be binding in all respects upon the Debtors and their estates and creditors, all holders of equity interests in any Debtor, all holders of any Claim(s), whether known or unknown, against any Debtor, any holders of Liens, Claims, and interests against or on all or any portion of the Assets, including, but not limited to the Secured Lenders, all Contract Counterparties, OJAC and all successors and assigns of OJAC, and any trustees, examiners, responsible officers, estate representatives, or similar entities for any of the Debtors, if any, subsequently appointed in any of the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases. This Order and the APA shall inure to the benefit of the Debtors, their estates and creditors, OJAC, and their respective successors and assigns.

Transfer of Assets

7. Pursuant to Bankruptcy Code sections 105(a), 363(b), 363(f), 365(b), and 365(f), the Debtors are authorized to transfer the Assets on the Closing Date, and OJAC is directed to pay the Purchase Price to the Debtors as provided in the APA. Except as otherwise provided in the APA, the Assets shall be transferred to OJAC "as is, where is" with all faults in accordance with the APA upon and as of the Closing Date and such transfer shall constitute a legal, valid, binding, and effective transfer of such Assets and, upon the Debtors' receipt of the Purchase Price, shall be free and clear of all Liens, Claims, and interests, except any Designated Contracts. Upon the closing of the Sale, OJAC shall take title to and possession of the Assets, subject only to any Designated Contracts.

8. All entities that are in possession of some or all of the Assets on the Closing Date are directed to surrender possession of such Assets to OJAC at the closing of the Sale. All entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Assets to OJAC in accordance with the terms of the APA and this Order.

9. Pursuant to section 363(f) of the Bankruptcy Code, the transfer of title to the Assets shall be free and clear of any and all Liens, Claims, and interests, except for Designated Contracts, including, but not limited to Liens, Claims, and interests held by, maintained by, or otherwise in favor of the Secured Lenders. Except to the extent set forth in the APA, OJAC is not and shall not be liable as a successor under any theory of successor liability for Liens, Claims, and interests that encumber or relate to the Assets. All Liens, Claims, and interests shall attach solely to the proceeds of the Sale with the same validity, priority, force, and effect that

they now have as against the Assets, and subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

10. On the Closing Date, each creditor is authorized and directed to execute such documents and take all other actions as may be necessary to release Liens, Claims, and interests (except for Designated Contracts) on the Assets, if any, as provided for herein, as such Liens, Claims, and interests may have been recorded or may otherwise exist.

11. This Order shall be effective as a determination that, as of the Closing Date, all Liens, Claims, and interests of any kind or nature whatsoever except for Designated Contracts existing as to the Assets prior to the Closing have been unconditionally released, discharged and terminated and that the conveyances described herein have been effected with such Liens, Claims, and interests automatically attaching to the proceeds of the Sale in the same priority and perfection that existed immediately prior to the Closing Date.

12. If any entity (a "Claim Holder") which has filed statements or other documents or agreements evidencing Liens, Claims, or interests on, or interests in, all or any portion of the Assets shall not have delivered to the Debtors prior to the Closing of the Sale, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Liens and easements, and any other documents necessary or desirable to OJAC for the purpose of documenting the release of all Liens, Claims, and interests that such Claim Holder has or may assert with respect to all or any portion of the Assets, then (i) the Debtors are authorized to execute and file such statements, instruments, releases, and other documents on behalf of such Claim Holder with respect to the Assets and (ii) OJAC is authorized to file, register, or otherwise record a certified copy of this Order with the appropriate clerk(s) and/or recorder(s), which, once filed, registered, or otherwise recorded, shall constitute conclusive

evidence of the release of all Liens, Claims, and interests in the Assets as of the Closing Date of any kind or nature whatsoever, other than the Designated Contracts; provided, however, that, notwithstanding anything to the contrary contained herein, any Liens held by the Secured Lenders shall be released and the authorization set forth herein shall apply to the release of such Liens only upon receipt by GE CEF of the proceeds of the Sale.

13. Except as expressly permitted or otherwise specifically provided by the APA or this Order, all entities holding Liens, Claims, and interests in all or any portion of the Assets (other than Designated Contracts) arising under or out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' business prior to the Closing Date, or the transfer of the Assets to OJAC, are hereby forever prohibited and permanently enjoined from asserting such Liens, Claims, and interests against OJAC, its successors or assigns, their property, or the Assets.

14. Except as otherwise provided by the Sale Documents or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, employees, former employees, tort claimants, litigants, trade and other creditors, holding Liens, Claims, and interests of any kind or nature whatsoever except for Designated Contracts against or in any of the Debtors or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Assets, the operation of the Assets prior to the Closing or the Sale, are forever barred, estopped and permanently enjoined from asserting, other than in this Court which shall retain exclusive jurisdiction to hear such controversies, against OJAC, its successors or assigns, its property or the Assets, such persons' or entities' Liens, Claims, and interests.

15. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease, and each of the foregoing entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

Designated Contracts

16. Certain lease Counterparties⁴ agreed to a further extension of the Section 365(d)(4) period by written consent as permitted under Section 365(d)(4)(B)(ii), as was separately approved of by Order of the Court. With respect to these Designated Contracts and any other Designated Contracts which are not nonresidential real property leases, the Debtors are authorized to assume each Designated Contract and to assign the Designated Contract to OJAC free and clear of all Liens, Claims, and interests, as described herein, upon the closing of the Sale. In the event that the Debtors do in fact assume and assign any such lease with any party listed in this Footnote 4, then the Debtors shall thereafter file with the Bankruptcy Court a “Notice of Assumption of Additional Designated Contract(s)” and, upon such filing, the lease(s) included in the “Notice of Assumption of Additional Designated Contract(s)” shall thereupon become Designated Contracts under this Sale Order and the APA. With respect to any

⁴ These lease Counterparties are as follows: Viking Rideau Corp., Bay Richmond House, Inc. and Manforce Development Ltd., Devonshire Arch Boston, LLC, Clark Adams Associates, LLC, DHM Chicago Hotel, L.P., MDA Master Tenant LLC, LEI AG-Seattle, Superior Property Management Services Ltd., 212 King West Holdings, LLC, Presidential Plaza, L.P. and BHR Operations, L.L.C.

Designated Contract where the lease Counterparty did not agree to a further extension of the Section 365(d)(4) period, the Debtors are authorized to assume such Designated Contract effective as of January 24, 2012 and thereafter assign it to OJAC free and clear of all Liens, Claims, and interests, as described herein, upon the closing of the Sale. With respect to the Debtors' lease with DC One Associates, the following additional terms shall apply:

The necessary parties to that certain amended lease in the form previously negotiated and deemed satisfactory to such parties shall be executed and delivered immediately upon entry of this Order. The Debtor's assumption of the lease with DC One Associates shall be deemed to include the amended lease, provided however if the scheduled closing with Original Joe's does not occur on or before February 17, 2012 (and D.C. One Associates does not grant in writing an extension of time for the closing of the sale to occur beyond that date or does not consent in writing to an alternative course of action) then (x) the Debtor's execution of the amendment shall be deemed void, (y) the parties hereby consent to an expedited hearing on the issue of whether the original lease was validly terminated pre-petition by D.C. One Associates and (z) the Debtors' use and occupancy of the premises shall continue during such time necessary for the Court to determine the rights of the parties, with the Debtors' making full payments to D.C. One Associates required by the lease during that time. Each party will have an opportunity to submit further briefing on the issue of the termination of the original lease and reserves all rights, including, but not limited to, the actual cure amount that would be necessary under the Bankruptcy Code to cure all monetary defaults and pay all actual pecuniary losses, including reasonable attorneys' fees, in the event this Court determines that the lease was not terminated pre-petition and is therefore subject to assumption or rejection. In connection with the assignment of the amended lease to OJAC at closing, however, payment of \$75,000 shall be made to D.C. One Associates for the Cure Amount with \$20,000 of such amount to be paid by OJAC

With respect to the Debtors' lease with 212 King West Holdings Inc for certain space located in Toronto, Ontario, the following additional terms apply:

The parties shall continue discussions concerning the objection filed by such landlord and shall endeavor to file a Stipulation on or before the close of business on January 26, 2012 resolving such issues. In the event the parties are unable to reach such resolution, the parties will be heard before the Court at a hearing to be held on January 27, 2012 at 2 pm in Springfield, Massachusetts.

With respect to the Debtors' lease with Presidential Plaza, L.P. for certain space located at 900 19th Street, NW, Washington, D.C., the following additional terms shall apply:

The parties shall continue discussions concerning the limited objection filed by such landlord and shall endeavor to file a Stipulation on or before the close of business on February __, 2012 resolving such issues. In the event the parties are unable to reach such resolution, the parties will be heard before the Court at a hearing to be held on February __, 2012. Moreover, notwithstanding any provisions of this Order to the contrary, the parties' respective rights and obligations with respect to such landlord's draw upon the letter of credit shall be determined in conjunction with the Debtors' motion seeking an order, *inter alia*, enforcing the Section 363 automatic stay [Docket # 261].

17. The payment of the applicable Cure Cost (if any) with regard to the Designated Contracts shall (a) effect a cure of all defaults existing thereunder as of the Closing Date and (b) compensate for any actual pecuniary loss resulting from such default. The Debtors shall then have assumed the Designated Contracts and assigned them to OJAC and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtors of the Designated Contracts shall not be a default there under. After the payment of the relevant Cure Cost, if any, neither the Debtors nor OJAC shall have any further liabilities to the Contract Counterparties other than OJAC's obligations under the Designated Contracts that accrue and become due and payable on or after the Closing Date except as otherwise agreed upon in writing between OJAC and a Contract Counterparty.

18. Nothing in this Order shall affect the rights of OJAC, until the Closing (as defined in the APA), in its sole discretion, to remove any executory contract or unexpired lease of the Debtors to or from the list of Designated Contracts.

19. The Debtors shall cooperate fully with and support OJAC in executing such applications and furnishing such documents as are necessary for OJAC to obtain all Liquor Licenses in accordance with the terms of the APA and Interim Management Agreement at no cost to the Debtors. All applicable state alcoholic beverage control, law enforcement, and regulatory agencies shall not interrupt any of the Business (as defined in the APA) without first

bringing the matter before this Court. Furthermore, the Business shall continue operating under all existing alcoholic beverage and other licenses of the Debtors until such licenses have been changed to OJAC's name, including, but not limited to state alcoholic beverage licenses, state food service licenses, local occupational licenses, and any other licenses needed to operate the Business with no interruption of the Business.

20. Any provisions in any Designated Contracts that prohibit or condition the assignment of such Designated Contracts or allow the party to such Designated Contracts to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon the assignment of such Designated Contract constitute unenforceable anti-assignment provisions that are of no force and effect in connection with the Debtors' assumption and assignment of the Designated Contracts to OJAC. Each Contract Counterparty who failed to file an objection to the proposed assignment of its contract with the Debtors (a "Contract Assignment Objection"), or by virtue of electing to withdraw such objection, is deemed to consent to the assumption by the Debtors and assignment to OJAC of their Designated Contract. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to OJAC of the Designated Contracts have been satisfied. Upon the closing of the Sale, in accordance with sections 363 and 365 of the Bankruptcy Code, OJAC shall be fully and irrevocably vested with all right, title, and interest of the Debtors under the Designated Contracts, which will remain in full force and effect. In addition, all Contract Counterparties to the Designated Contracts are (a) forever barred from asserting any additional cure or other amounts with respect to the Designated Contracts, and the Debtors and OJAC are entitled to rely solely upon the Cure Obligations set forth on Cure Schedule or Revised Cure Schedule, where applicable; (b) deemed to have consented to the

assumption and assignment; and (c) forever barred and estopped from asserting or claiming against the Debtors or OJAC that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Designated Contracts, or that there is any objection or defense to the assumption and assignment of such Designated Contracts.

21. Upon the closing of the Sale and payment of the relevant Cure Obligations related to the Designated Contracts, if any, OJAC shall be deemed to be substituted for the Debtors as a party to the applicable Designated Contracts, and the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Designated Contracts.

22. Upon the payment of the applicable Cure Obligations, if any, the Designated Contracts will remain in full force and effect, and no default shall exist under the Designated Contracts nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

23. OJAC has provided adequate assurance of future performance under the relevant Designated Contracts within the meaning of Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B).

24. There shall be no rent accelerations, assignment fees, increases, or any other fees charged to OJAC or the Debtors as a result of the assumption and assignment of the Designated Contracts.

25. Pursuant to Bankruptcy Code sections 105(a), 363, and 365, all Contract Counterparties are forever barred and permanently enjoined from raising or asserting against the Debtors or OJAC any assignment fee, default, breach, claim for pecuniary loss, or condition to assignment arising under or related to the Designated Contracts existing as of the Closing Date

or arising by reason of the Closing

Payment of Sale Proceeds

26. All consideration paid by OJAC in connection with the Sale shall be paid directly to GE CEF, as agent under the GE CEF Prepetition Credit Agreement (as defined in the *Stipulation and Final Order (A) Authorizing Use of Cash Collateral; (B) Granting Adequate Protection; (C) Authorizing Various Carve-Outs from Lenders Collateral and (D) Granting Related Relief* [Docket No. 246] (the “Cash Collateral Order”), on the Closing Date, except that OJAC shall transfer the following amounts to the two accounts described below pursuant to wire instructions provided by GE CEF:

- a. \$3,194,807 shall be funded into a segregated escrow account (the “APA Escrow Account”) for use solely in paying applicable (i) post-petition sales taxes, (ii) pre-petition sales taxes, (iii) landlord cure amounts, and (iv) gift card liability, each in accordance with the APA, which items are currently estimated to be \$3,194,807;
- b. an amount equal to \$1,732,618, minus all cash on hand (net of float) of the Debtors on the Closing Date (the “Remaining Cash”), as estimated in good faith by the Debtors (such difference, the “Priority Claim Carve Out”), shall be paid directly to a segregated debtor-in-possession account of the Debtors (the “Carve Out Escrow Account”) on the Closing Date to pay the expenses itemized on page 2 of Exhibit B attached hereto;
- c. to pay \$455,000 on account of and in satisfaction of (i) the Transaction Fee (as defined in the Cash Collateral Order), (ii) accrued and unpaid fees and expenses, and (iii) accrued and unpaid monthly fees, in each case due and owing to BellMark Partners LLC (“BellMark”) pursuant to the terms of that certain engagement letter, dated April 12, 2011, between BellMark and the Debtors (collectively, the “BellMark Fees”), to the Carve Out Escrow Account on the Closing Date upon which the Debtors shall turnover an amount equal to the BellMark Fees to pay BellMark;
- d. to pay an amount equal to accrued and unpaid fees and expenses of the Debtors’ Professionals (as defined in the Cash Collateral Order) incurred prior to the Closing Date, which amount shall not be greater than 100% of the cumulative amount set forth in the Budget (as defined in the Cash Collateral Order) for such fees and expenses shall be transferred to the Carve Out Escrow Account on the Closing Date upon which the Debtors shall immediately turn over this amount to PMCM 2, LLC (the “Escrow Agent”) immediately thereafter, upon which the Escrow Agent shall use this amount to solely pay the Debtors’ Professionals in

accordance with the terms of the Interim Compensation Order entered by the Court in these Cases;

- e. to pay an amount equal to the sum of (i) \$100,000 plus (ii) up to a maximum of \$75,000, the amount by which (A) the cumulative amounts set forth in the Budget for the payment of fees and expenses of the Debtors' Professionals incurred prior to the Closing Date exceeds (B) the amount actually incurred by and paid to the Debtors' Professionals for services rendered during such period (such sum, the "Debtors' Professionals Post-Closing Carve-Out"), which amount shall be transferred to the Carve Out Escrow Account on the Closing Date upon which the Debtors shall immediately turn over this amount to the Escrow Agent to hold in escrow solely for benefit of the Debtors' Professionals for amounts incurred after the Closing Date which amounts shall be paid to the Debtors' Professionals in accordance with the terms of the Interim Compensation Order entered by the Court in these Cases;
- f. to pay an amount equal to (i) accrued and unpaid fees and expenses of the Committee's Professionals (as defined in the Cash Collateral Order) for services rendered on or before December 21, 2011 (including, without limitation, any and all holdback amounts) which amount shall not be greater than 100% of the cumulative amount for the Committee's Professionals set forth in the Budget (as defined in the Cash Collateral Order) for such fees and expenses, plus (ii) \$120,000 (the "Committee Professional Fee Carve Out") which amount shall be transferred to the Carve Out Escrow Account on the Closing Date upon which the Debtors shall immediately turn over this amount to the Escrow Agent to hold for the benefit of the Committee's Professionals, upon which the Committee Professional Fee Carve Out shall be paid to the Committee's Professionals in accordance with the terms of the Interim Compensation Order entered by the Court in these Cases and/or any further orders of this Court; provided further that the sum remaining after subtracting (x) the amounts paid to the Committee's Professionals on account of services rendered after December 21, 2011 from (y) \$120,000 shall be retained by the Escrow Agent solely for the purpose of paying the Debtors' Professionals in accordance with the terms of the Interim Compensation Order and/or (with respect to up to \$20,000 of such funds) to be used to augment the Claims Servicing Carve-Out as set forth in Section 22(b) of the Cash Collateral Order;
- g. to pay an amount equal to the lesser of (i) \$500,000 and (ii) 10% of all scheduled and timely asserted general unsecured claims (the "Unsecured Creditor Carve-Out"), which amount shall be transferred to the Carve Out Escrow Account on the Closing Date upon which the Debtors shall immediately turn over the amount of the Unsecured Creditor Carve-Out to Goulston & Storrs, counsel to the Committee, to hold such amount in its client funds account pending further instructions or further order of the Court to turn over such funds to the Claims Servicing Agent (as defined in the Cash Collateral Order);
- h. to pay an amount equal to \$30,000, which amount shall be transferred to the

Carve Out Escrow Account on the Closing Date upon which the Debtors shall then turn over the money to Goulston & Storrs, counsel to the Committee, which shall hold such amount in its client funds account pending further instructions or further order of the Court to turn over such funds to the Claims Servicing Agent (as defined in the Cash Collateral Order); and

- i. to pay \$186,000 (the “US Trustee Carve Out”) for the fees of the United States Trustee and Clerk of the Bankruptcy Court pursuant to section 1930 of title 28 of the United States Code and the statutory interest payable to the United States Trustee pursuant to section 3717 of title 31 of the United States Code, which amount shall be transferred to the Carve Out Escrow Account on the Closing Date upon which the Debtors shall immediately turn over this amount to the United States Trustee and Clerk of the Bankruptcy Court, as applicable.

27. Any contingent payments under the APA not yet due and payable on the Closing Date shall be paid by OJAC as and when they become due and payable following the Closing Date directly to GE CEF.

28. The Debtors shall turn over to GE CEF any accounts receivable received by the Debtors after Closing including credit card accounts receivables or hotel accounts receivables, as soon as practicable upon receipt.

29. It is hereby acknowledged and agreed that the security interests and liens of GE CEF against the Assets shall attach in the same priority and to the same extent as existed on the Assets immediately prior to the consummation of the Sale to (i) all consideration paid by OJAC in connection with the Sale, (ii) all funds in the Seller Escrow Account, and (iii) Remaining Cash. To the extent an amounts (and any interest accrued thereon) remain in the APA Escrow Account or (a) the Carve Out Escrow Account, (b) the Debtors’ Professionals Post-Closing Carve-Out, (c) the Committee’s Professionals Post-Closing Carve-Out, (d) the Claims Servicing Carve-Out, and (e) the US Trustee Carve-Out (clauses (a) – (e) collectively, the “Carve-Outs” and each, a “Carve-Out”) after final payment of all amounts for which such Carve-Out was designed (as specified herein and in the Cash Collateral Order), any such excess funds shall be paid directly to GE CEF as soon as practicable.

Other Provisions

30. Except for Designated Contracts or as otherwise expressly set forth in this Order or the APA, OJAC shall not have any liability or other obligation of the Debtors arising under or related to any of the Assets except as otherwise agreed upon in writing between OJAC and a Contract Counterparty. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the APA, OJAC shall not be liable for any Claims against the Debtors or any of their predecessors or affiliates, and OJAC shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger, substantial continuity, the WARN Act and employee benefit and/or welfare plan(s) (including, without limitation (i) any employment or labor agreements (except Designated Contracts); (ii) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of the Debtors (iii) any other employee, workers' compensation, occupational disease, or unemployment or temporary disability related Claim, including without limitation Claims that might otherwise arise under or pursuant to (a) the Employee Retirement, Income, Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967, and (h) the Consolidated Omnibus Budget Reconciliation Act of 1986; (iv) environmental Claims or Liens arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous toxic, polluting, or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental

Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. or similar state statute, (v) any bulk sales or similar law; and (vi) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, or liquidated or unliquidated with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date. Notwithstanding anything to the contrary herein, nothing in this Sale Order shall impair, modify or release any rights, claims or recovery any Counter Party to a Designated Contract may be entitled to under policies of insurance previously obtained and maintained by Debtor under the terms of the Designated Contracts, naming the Counter Party as an additional insured, with respect to claims, losses, costs, damages, and expenses resulting from acts or occurrences prior to the Closing but not asserted until thereafter.

31. OJAC shall not be liable for any Liens, Claims, and interests of any kind or nature whatsoever in or against the Debtors or any of their predecessors or affiliates except for Designated Contracts, and OJAC shall have no successor or vicarious liabilities of any kind or character including, but not limited to (except as agreed to in the Sale Documents), liabilities on account of any tax arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the Assets prior to the closing of the Sale, and OJAC shall be exonerated of any successor liability to any state or federal taxing authority with regard to any tax, including sales tax.

32. OJAC has given substantial consideration under the Sale Documents for the benefit of Claim Holders. The consideration given by OJAC shall constitute valid and valuable consideration for the releases of any potential Claims of successor liability of OJAC, releases

which the Court holds shall be deemed to have been given in favor of OJAC by all Claim Holders against the Debtors or their respective assets, except as set forth below.

33. Under no circumstances shall OJAC be deemed a successor of or to the Debtors for any Liens, Claims, and interests of any kind or nature whatsoever against or in the Debtors or Assets . The sale, transfer, assignment and delivery of the Assets shall not be subject to any Liens, Claims, and interests of any kind or nature whatsoever except for Designated Contracts, which shall remain with, and continue to be obligations of, the Debtors. All Claim Holders asserting Liens, Claims, and interests of any kind or nature whatsoever against or in the Debtors or the Assets (including, but not limited to, the Debtors and/or their respective successors, including any trustees thereof, creditors, employees, unions, former employees and shareholders, administrative agencies, governmental units, secretaries of state, federal, state and local officials, maintaining any authority relating to any environmental, health and safety laws, and their respective successors or assigns) shall be, and hereby are, forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Liens, Claims, and interests of any kind or nature whatsoever against OJAC, its property, its successors and assigns, or the Assets, as an alleged successor or otherwise, with respect to any Liens, Claims, and interests of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtors, the Debtors' estates, their respective officers, directors, shareholders or the Assets except for Designated Contracts. Following the Closing, no Claim Holder shall interfere with OJAC's title to or use and enjoyment of the Assets based on or related to such Lien, Claim or interest, or any actions that the Debtors may take in their Chapter 11 case.

34. The transactions contemplated by the APA are undertaken by OJAC without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code,

and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the transactions contemplated by the APA (including the assumption and assignment of the Designated Contracts), unless such authorization and consummation of such transactions are duly stayed pending such appeal. OJAC is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

35. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) these chapter 11 cases, (b) any subsequent chapter 7 case into which any such chapter 11 cases may be converted, or (c) any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of the APA or the terms of this Order.

36. Pursuant to Bankruptcy Rules 7062, 9014, 6004(h), and 6006(d), this Order shall be effective immediately upon entry and the Debtors and OJAC are authorized, but are not required, to close the Sale immediately upon entry of this Order, notwithstanding the fourteen-day stay periods in Bankruptcy Rules 6004(h) and 6006(d), which are expressly waived.

37. Except for the fees and expenses of Bellmark (for which the Debtors are solely responsible), the Debtors do not have any obligation to pay any fees, commissions or other similar compensation to any broker, finder, investment banker, financial advisor or other similar person in connection with the Sale.

38. The failure specifically to include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the APA be authorized and approved in its entirety.

39. The APA and any related agreements, documents, or other instruments may be

modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of this Court; provided, that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

40. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to any of the transactions under the APA.

41. The transactions authorized herein shall be of full force and effect, regardless of any Debtor's lack of good standing in any, jurisdiction in which such Debtor is formed or authorized to transact business.

42. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

43. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Order shall govern.

44. To the extent there are any inconsistencies between the terms of this Order and the APA (including all ancillary documents executed in connection therewith), the terms of this Order shall govern.

45. The Debtors are authorized, empowered and ordered to take all actions necessary to effect the relief granted pursuant to this Order in accordance with the Motion.

46. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of this Court, to (i) allow OJAC to deliver any notice provided for in the APA, and (ii) allow OJAC to take any and all actions permitted under the APA in accordance with the terms and conditions thereof.

47. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this

proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the findings of fact set forth herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law set forth herein constitute findings of fact, they are adopted as such.

48. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the APA, all amendments thereto and any waivers and consents there under and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to OJAC, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale. To the extent necessary to recognize and give effect to this Order in Canada, this Court hereby requests the aid and assistance of the courts in Canada, and specifically the Ontario Superior Court of Justice where the Debtors have obtained orders granting recognition in that court of orders entered by this Court.

Dated: _____, 2012

Honorable United States Bankruptcy Judge

EXHIBIT A
REVISED CURE SCHEDULE

**ELEPHANT & CASTLE REVISED CURE SCHEDULE
EXHIBIT A**

<i>Location</i>	<i>Landlord</i>	<i>Original Cure Amount</i>	<i>Revised Cure Amount (if different)</i>
ECC 10020 102 Avenue Edmonton, AB	Oxford Properties Group	\$31,641.00	
MARINE BLDG. 355 Burrard Street Vancouver, BC	OMERS Realty Corp.	\$612.32	
TORONTO YONGE 378 Yonge Street Toronto, ON	Turbo Mac Limited	\$52.25	
WINNIPEG 350 St. Mary's Avenue Winnipeg, MB	Legacy Hotels Corp.	\$9,608.46	
PHILADELPHIA 1800 Market Street Philadelphia, PA	Crowne Plaza Phil. City Center	\$401.11	
WASHINGTON DC I 1201 Pennsylvania Ave. Washington, DC	DC One Associates	\$35,498.54	\$75,000*

*Of this, \$20,000 is being paid directly by Original Joe's Acquisition Corporation.

EXHIBIT B
PARAGRAPH 25(b) EXPENSES

Elephant and Castle
363 Sale Proceeds
Sources & Uses

<u>Sources:</u>	<u>Uses:</u>
363 Purchase Price Proceeds	22,750,000
	Post-Petition Sales Taxes ⁽¹⁾ 336,867
	Pre-Petition Sales Taxes (US) ⁽²⁾ 1,258,426
	Pre-Petition Sales Taxes (Canada) ⁽²⁾ 1,011,689
	Landlord Cure Amounts ⁽³⁾ 537,824
	Gift Card Liability ⁽⁴⁾ 50,000
	Other Contract Cure Amounts ⁽⁵⁾ -
	Total Escrow Amounts by Buyer (Paragraph 26(a)) 3,194,807
	Bellmark IB Fee (Paragraph 26(c)) 455,000
	Proceeds for Bankruptcy Windup 19,100,193
Total Sources	Total Uses
	22,750,000 22,750,000

FOOTNOTES:

- (1) Estimated Sales Taxes owed after sales made for the week ending 2/3 or Closing Date
- (2) Estimated Sales Taxes owed pre-petition, however, claims reconciliation/discussion is needed
- (3) Estimated Landlord cures based on Stalking Horse Cure Schedule, plus adjusted Penn Ave Cure, plus estimated additional cures based on objections
- (4) Estimated and Scheduled on Stalking Horse Cure Schedule
- (5) Stalking Horse has not indicated any Contracts to be assumed

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**Elephant and Castle
Bankruptcy Winddown
Sources & Uses**

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<u>Sources:</u>		<u>Uses:</u>	
Proceeds from 363 Transaction	19,100,193	Post-Petition AP	437,214 ⁽¹⁾
Est. Cash on Hand	599,782	Employee Insurance Claims	75,000 ⁽²⁾
Est. Cash Collections for AR	378,873	Canadian Severance Claims	60,000 ⁽²⁾
<i>*due from Credit Card Companies (avg 3 days) and Hotels</i>		Vacation Accrual (US&Canada)	64,970 ⁽²⁾
		Accrued Wages (US&Canada)	288,828 ⁽²⁾
		503(b)(9) Claims on Pre-Petition AP	424,186 ⁽³⁾
		PACA Claims	134,000 ⁽⁴⁾
		Other	248,420
		Total Administrative/Priority Payments (Paragraph 26(b))	1,732,618
		US Trustee Payments (Paragraph 26(i))	186,000 ⁽⁵⁾
		Carve out for Unpaid Professional Fees (Paragraph 26(d/e/ff))	929,876 ⁽⁶⁾
		Carve Out for Liquidation Agent (Paragraph 26(h))	30,000
		Carve Out for Debtors Professional (Post Closing) (Paragraph 26(e))	100,000
		Maximum SPA Carve Out (Unsecureds) (Paragraph 26(g))	500,000
		Total Carve Outs of GE Proceeds	1,745,876
		Est. GE Payment on Pre-Petition Secured Debt	16,600,353
Total Sources	20,078,848	Total Uses	20,078,848

FOOTNOTES:

- (1) Estimated for the week ending 2/3 in the final cash collateral order and excludes sales taxes, landlords, professional fees
- (2) Estimated amounts for Employees as part of the Stalking Horse bidders APA
- (3) Have unsigned stipulation agreements outstanding w/ Edward Don, US Foods, Gordon Foods for \$408,677.23
- (4) Have unsigned stipulation agreements outstanding w/ Delmares and US Foods for \$81,192.72
- (5) Estimated 3 quarters of payments at \$62,000/quarter
- (6) Includes maximum payment to UCC for unpaid professional fees and based on accrued fee schedule less retainers that can be applied

Appendix K

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS**

In re: : Chapter 11
: :
Massachusetts Elephant & Castle : :
Group, Inc., et al.¹ : Case No. 11-16155 (HJB)
: :
Debtors : Jointly Administered

**ORDER GRANTING THE DEBTORS’ ORAL MOTION TO
FURTHER EXTEND THE TIME TO ASSUME OR REJECT
CERTAIN UNEXPIRED LEASES OF REAL PROPERTY
UPON WRITTEN CONSENT OF THE LANDLORDS**

Upon consideration of the oral motion (the “Motion”) made by the Debtors on January 24, 2012, to further extend the time to assume or reject certain unexpired leases of real property upon received written consent from the landlords; and it appearing notice was sufficient and that no other or further notice need be given; and it appearing that the relief requested by the Motion is in the best interests of the Debtors’ estates; and after due deliberation thereon, and good and sufficient cause appearing therefor; it is hereby

ORDERED, that the Motion is granted effective; and it is further

ORDERED, that Debtors have an extension of time effective January 24, 2012, to assume or reject certain nonresidential real property leases, with each such lease and the time allotted for the extension for each such lease referenced on the attached Exhibit A; and it is further

ORDERED, that in the event that the Debtors do in fact assume and assign any lease referenced on Exhibit A, then the Debtors shall thereafter file with the Bankruptcy Court a

¹ The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, are Massachusetts Elephant & Castle Group, Inc. (5090), Elephant and Castle of Pennsylvania, Inc. (9152), E&C Pub, Inc. (4001), Elephant & Castle Inc. (Washington) (3988), Elephant & Castle (Chicago) Corporation (5254), Elephant & Castle East Huron, LLC (8642), E&C Capital, LLC (4895), Elephant & Castle Illinois Corporation (2811), E&C Eye Street, LLC (1803), Elephant & Castle International, Inc. (5294), Elephant & Castle Pratt Street, LLC (7898), Elephant & Castle Group Inc. (no U.S. EIN), Elephant & Castle Canada Inc. (no U.S. EIN), Repechage Investments Limited (no U.S. EIN), Elephant & Castle, Inc. (Texas) (no U.S. EIN). The debtors’ corporate offices are located at 50 Congress Street, Suite 900, Boston, MA 02109.

“Notice of Assumption of Additional Designated Contract(s)” and, upon such filing, the lease(s) included in the “Notice of Assumption of Additional Designated Contract(s)” shall thereupon become Designated Contracts under this Sale Order and the APA.

ORDERED, that this Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order.

Dated: January _____, 2012

The Honorable Henry J. Boroff
United States Bankruptcy Judge

**Massachusetts Elephant & Castle Group, Inc.
Exhibit A**

LOCATION	LANDLORD	NEW ASSUMPTION/ REJECTION DATE
OTTAWA The Exchange Building Units #101/201 Ottawa, ON	Viking Rideau Corp.	February 29, 2012
ROSIE'S Robson Suite Hotel Vancouver, BC	Bay Richmond House, Inc. and Manforce Developments Ltd.	February 29, 2012
BOSTON 161 Devonshire Street Boston, MA	Devonshire Arch Boston, LLC	February 29, 2012
CHICAGO – ADAMS 111 West Adams Street Chicago, IL	Clark Adams Associates, LLC	February 29, 2012
CHICAGO – E HURON 150-160 East Huron Street Chicago, IL	DHM Chicago Hotel, L.P.	February 29, 2012
CHICAGO – N WABASH 185 North Wabash Avenue Chicago, IL	MDA Master Tenant LLC	February 29, 2012
SEATTLE 1415 Fifth Avenue Seattle, WA	LEI AG-Seattle	February 29, 2012

Massachusetts Elephant & Castle Group, Inc.

Exhibit A

LOCATION	LANDLORD	NEW ASSUMPTION/ REJECTION DATE
WHYTE AVENUE 100-71 Corriveau Ave. St. Albert, AB T8N 5A3	Superior Property Management Services Ltd.	February 2, 2012
TORONTO KING 212 King Street West Toronto, ON	212 King West Holdings, LLC *	February 1, 2012
WASHINGTON DC II EYE STREET 900 19 TH Street, NW Washington, DC	Presidential Plaza, LP*	February 1, 2012
SAN DIEGO 1355 North Harbor Drive San Diego, CA	BHR Operations, L.L.C.*	February 1, 2012

*The terms of the assumption of this lease shall be set forth in the Sale Order.

Appendix L

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

In re:

MASSACHUSETTS ELEPHANT &
CASTLE GROUP, INC., ET AL.,

Debtors.

Chapter 11
Case No. 11-16155-HJB

**OBJECTION OF 212 KING WEST HOLDINGS INC. TO
CURE AMOUNT AND LIMITED OBJECTION TO
ASSUMPTION AND ASSIGNMENT OF LEASE**

NOW COMES 212 King West Holdings Inc. (the "Landlord") and hereby submits this Objection to Cure Amount and Limited Objection to Assumption and Assignment of Lease (the "Objection") as required by the Debtors' Notice of Proposed Assumption and Assignment of Executory Contracts (the "Assumption Notice"). As set forth herein, the Landlord objects among other things to the proposed cure amount of \$0.00 that the Debtors set forth in Exhibit A of the Assumption Notice. In support of this Objection, the Landlord respectfully states as follows:

I. BACKGROUND

1. On June 28, 2011 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue to act as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

2. The Landlord leases space (the "Premises") to one of the Debtors pursuant to a lease dated February 1, 1996 (the "Original Lease"), which lease was extended and amended by a First Lease Extension Agreement dated November 30, 2010 (the "Lease Extension"; together with the Original Lease, the "Lease"). Copies of the original Lease and the Lease Extension are

attached as Exhibit A and Exhibit B, respectively. The Premises is located at 212 King Street West, Toronto, Canada.

3. On November 18, 2011, the Debtors filed their Motion for an Order (A) Authorizing and Approving Bid Procedures; (B) Scheduling a Hearing to Consider the Sale of Substantially All of the Debtors' Assets; (C) Prescribing the Manner and Notice of the Sale Hearing; (D) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (E) Authorizing the Assumption and Assignment of Certain Executory Contracts; and (F) Granting Other Related Relief (the "Sale Motion"). In the Sale Motion, the Debtors sought, among other relief, an order approving bidding and auction procedures (the "Bidding Procedures") for the sale of substantially all of the Debtors' assets to Original Joe's Acquisition Corp. ("Original Joe's") or another successful bidder. The Debtors also sought authority to assume and assign certain unexpired leases to Original Joe's or another successful bidder.

4. On December 21, 2011, the Court entered an order approving the Bidding Procedures (the "Bidding Procedures Order"). In the Bidding Procedures Order, the Court also approved a form of notice regarding assumption and assignment of executory contracts.

5. On December 22, 2011, the Debtors caused to be served their Notice of Proposed Assumption and Assignment of Executory Contracts (i.e., the Assumption Notice). In the Assumption Notice, the Debtors identify the Lease as a "Designated Contract" with a proposed cure amount of \$0.00.

II. LANDLORD'S CURE AMOUNT

6. The Landlord hereby states that the actual amount owed under the Lease as of the date of this Objection totals at least \$61,545.49 (the "Cure Claim"). The Cure Claim consists of the following charges:

Unpaid Rent (based on increased area calculation):	\$50,848.04
Late Payment Charge:	\$2,500.00
2011 Reconciliation:	\$8,197.45
TOTAL:	\$61,545.49

7. With respect to the line item for unpaid rent, on or about June 24, 2011, the Landlord determined that the area of leased space at the Premises was greater than reflected in the Lease. A copy of the Certificate of Area is attached hereto as Exhibit C. The Debtor has failed to pay increased rent associated with this increase in square footage from January 2010 through January 2012. The Schedules of Rental Payments from January 2010 through January 2012 are attached as Exhibit D.

8. With respect to the line item for 2011 Reconciliation, the Landlord has completed its review of the 2011 operating costs and realty taxes and has determined that the Debtors owe \$8,197.45 on account of such reconciliation. A (redacted) copy of the letter setting forth such information is attached as Exhibit E.

9. The Landlord further submits that additional amounts may also be due with regard to the pre-petition and post-petition periods. Specifically, the Debtors must continue to pay their monthly obligations of rent and other charges due under the Lease during the post-petition period. In addition, year-end adjustments to various items may be due including, but not limited to, real estate taxes and common area maintenance, as well as annual percentage rental. Bankruptcy Code § 365(b) requires that a debtor cure all defaults in conjunction with lease assumption. As a result, the Debtors and any proposed assignee must acknowledge, and any

order approving cure amounts and assumption and assignment must provide, that the proposed assignee (i) shall be liable for any and all unbilled charges whether those charges cover pre-petition or pre-assumption periods of time and (ii) shall pay any and all year-end adjustments when due pursuant to the terms of the Lease.

III. LIMITED OBJECTION TO ASSUMPTION AND ASSIGNMENT

10. The Landlord objects on a limited basis to the Sale Motion and to assumption and assignment of the Lease to the extent that the Debtors may attempt to assume and assign portions of the Lease that are no longer in effect. Specifically, the Debtors have forfeited their renewal based on their numerous pre-petition payment defaults. See Original Lease at ¶ 2.03(a). Similarly, the Debtors have also forfeited the furniture, fixtures, and equipment located at the premises to the Landlord due to their pre-petition payment defaults. See Original Lease at ¶ 4.15.

IV. RESERVATION OF RIGHTS

11. The Landlord joins the objections and/or statements of cure amounts filed by the Debtors' other landlords, to the extent that they supplement and are not otherwise inconsistent herewith.

12. The Landlord reserves the right to further object to the Debtors' proposed cure amount and to increase or further reconcile the cure claims set forth herein. In addition, the Landlord reserves the right to object to any proposed assignee.

WHEREFORE, the Landlord respectfully requests that this Court enter an order:

A. Sustaining the within objection; and

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B. Granting the Landlord such other and further relief as is just.

Respectfully submitted,

212 KING WEST HOLDINGS INC.,

By its attorneys,

/s/ Gina M. Barbieri

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Date: January 20, 2011

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

In re:

MASSACHUSETTS ELEPHANT &
CASTLE GROUP, INC., ET AL.,

Debtor.

Chapter 11
Case No. 11-16155-HJB

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2012, I caused a copy of the following document to be served upon each party noted on the attached Service List by First-Class United States mail, postage pre-paid, or as otherwise noted on the attached Service List:

**Objection of 212 King West Holdings Inc. to Cure Amount
and Limited Objection to Assumption and Assignment of Lease.**

/s/ Gina M. Barbieri

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Dated: January 20, 2012

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**Massachusetts Elephant & Castle Group, Inc., Debtor
Chapter 11, Case No. 11-16155 (HJB)**

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT
OF MASSACHUSETTS EASTERN DIVISION WITH RESPECT TO THE COMPANIES LISTED ON SCHEDULE "A" HERETO (THE
"CHAPTER 11 DEBTORS")

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

SECOND REPORT OF THE INFORMATION
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**Lawyers for Massachusetts Elephant & Castle
Group, Inc.**

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TAB

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) MONDAY THE 23rd DAY
)
JUSTICE MORAWETZ) OF JANUARY, 2012

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS
TAKEN IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION
WITH RESPECT TO THE COMPANIES LISTED ON
SCHEDULE "A" HERETO (THE "CHAPTER 11 DEBTORS")**

**APPLICATION OF
MASSACHUSETTS ELEPHANT & CASTLE GROUP, INC.**

**UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**CONFIRMATION
APPROVAL AND VESTING ORDER**

THIS MOTION, made by Massachusetts Elephant & Castle Group, Inc. ("MECG" or the "Applicant") in its capacity as the foreign representative (the "Foreign Representative") of the Chapter 11 Debtors (collectively, the "Debtors") in the proceedings commenced on June 28, 2011, in the United States Bankruptcy Court for the District of Massachusetts Eastern Division, under Chapter 11 of Title 11 of the United States Code (the "Chapter 11 Proceeding"), for an Order substantially in the form enclosed in the Motion Record of the Applicant was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, filed, the Second Report of BDO Canada Limited (“BDO”), in its capacity as Information Officer (the “Information Officer”), dated January 26, 2012 (the “Second Report”), filed, and the pleadings and proceedings previously filed in this action, and upon hearing the submissions of counsel for the Foreign Representative, counsel for Original Joe’s Acquisition Corp. (the “Purchaser”), and counsel for GE Canada Equipment Financing G.P., and counsel for _____, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of _____, sworn _____, filed:

1. **THIS COURT ORDERS AND DECLARES** that service is deemed good and sufficient for all purposes, and service on any party not named in the service list is expressly dispensed with.

2. **THIS COURT ORDERS AND DECLARES** that the Order (A) Approving Asset Purchase Agreement Between The Debtors And OJAC; (B) Authorizing The Sale Of The Assets Of The Debtors Free And Clear Of All Liens, Claims And Interests; And (C) Authorizing The Assumption And Assignment Of Executory Contracts And Unexpired Leases In Connection Therewith, granted _____, a copy of which is attached hereto as Schedule B, is hereby approved, recognized and given force and effect in Canada.

3. **THIS COURT ORDERS AND DECLARES** that the execution of the Asset Purchase Agreement dated November 18, 2011, attached as Appendix “D” to the Second Report (the “APA”), by the Debtors is hereby authorized and approved, and the transactions set out therein are also approved. The Debtors are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction and for the conveyance of the Assets (as defined in the APA) to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that upon Closing, all of the Debtors' right, title and interest in and to the Assets described in the APA shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured,

unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (ii) any Claims registered against any Title affecting the Assets, including those Claims listed on Schedule D hereto (all of which are collectively referred to as the "Encumbrances") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Assets are hereby expunged and discharged as against the Assets.

5. **THIS COURT ORDERS** that Designated Contracts (as defined in the APA, and which include Assigned Leases, which are specifically set out as Schedule C to this Order, and Assigned Contracts) shall vest in the Purchaser subject to the conditions and in accordance with the terms of the APA, and, for certainty, upon so vesting, any and all past defaults shall be deemed to be cured, and each lease shall be in good standing and effective according to its terms as against the landlord and the Purchaser, as tenant.

6. **THIS COURT ORDERS** that upon the registration in the Land Registry Office of a Transfer of Leasehold Interest in the form prescribed by the *Land Registration Reform Act* duly executed by the relevant Debtor, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject Assigned Lease identified in Schedule C, and is hereby directed to delete and expunge from title all of the Claims listed in Schedule D hereto, and any of the subsequent Claims affecting the Assigned Lease. To the extent of its jurisdiction, this Court directs the land registry offices in the Provinces of Alberta, British Columbia, and Manitoba, to register the transfer of Assigned Leases on the same terms, but the parties have leave, but not the obligation, to seek recognition of this Order, or an equivalent Confirmation, Approval and Vesting Order in those jurisdictions, if necessary as it relates to the Assigned Leases, or otherwise.

7. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the Purchased Assets, and that from and after Closing all Claims and Encumbrances formerly attaching to the Assigned Leases or the Assets shall attach to the net proceeds from the sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the

sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the relevant Debtors are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current Canadian employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

9. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any Debtor;

the vesting of the Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

11. **THIS COURT ORDERS AND DECLARES** that the Debtors or the Purchaser have leave to reapply for further Order or Orders that may be necessary to carry out the terms of the Transaction.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Foreign Representative, the other Debtors, and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Foreign Representative or the other Debtors, as may be necessary or desirable to give effect to this Order or to assist the Foreign Representative or the other Debtors and their agents in carrying out the terms of this Order.

SCHEDULE A

1. Massachusetts Elephant & Castle Group, Inc.
2. Repechage Investments Limited
3. Elephant & Castle Group Inc.
4. The Elephant and Castle Canada Inc.
5. Elephant & Castle, Inc. (a Texas Corporation)
6. Elephant & Castle Inc. (a Washington Corporation)
7. Elephant & Castle International, Inc.
8. Elephant & Castle of Pennsylvania, Inc.
9. E & C Pub, Inc.
10. Elephant & Castle East Huron, LLC
11. Elephant & Castle Illinois Corporation
12. E&C Eye Street, LLC
13. E & C Capital, LLC
14. Elephant & Castle (Chicago) Corporation

Schedule B
Sale Approval Order

Schedule C

Canadian Assigned Leases

1. Lease dated February 1, 1996 between 212 King Street West Limited, as Landlord, The Elephant & Castle Canada Inc., as Tenant, and Elephant & Castle Group Inc., as Guarantor, covering a portion of the premises located at 212 King Street West, Toronto, Ontario, Canada, as extended by First Lease Extension Agreement between 212 King West Holdings, Inc. Successor in Interest to 212 King Street West Limited, as Landlord, The Elephant & Castle Canada Inc., as Tenant, and Elephant & Castle Group Inc., as Indemnifier, dated November 30, 2010, covering a portion of the premises located at 212 King Street West, Toronto, Ontario, Canada, registered as Instrument No. CA389681, against PIN 21411-0175.
2. Lease dated August 1, 1997 between 366575 Alberta Ltd., as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering a portion of the premises located at 10314 Whyte (82nd) Avenue, Edmonton, Alberta, Canada.
3. Lease dated December 2, 2009 between 4308 Main Street Ltd., as Landlord, and Elephant & Castle Canada Inc., as Tenant, covering a portion of the premises located at 4308 Main Street, Whistler, B.C., Canada.
4. Lease dated December 15, 2004 between 491100 B.C. Ltd. and Manforce Developments, Ltd., as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering a portion of the premises located at Strata Lots 282 and 283, District Lot 541 Group 1, New Westminster District Strata Plan LMS 1863 and Sub-Lease dated December 5, 1995, between Rosedale on Robson Suite Hotel Inc., as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering the same premises and described above.
5. Lease dated November, 1993 between Holiday Inns of Canada Ltd., as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering a portion of the premises located at 350 St. Mary's Avenue, Winnipeg, Manitoba, Canada, as amended by Lease Amending Agreement dated January 14, 2004, by and between Legacy Hotels Corporation, successor in interest to Holiday Inns of Canada, Ltd. as Landlord, and The Elephant & Castle Canada Inc., as Tenant.
6. Lease of Retail Space dated January 15, 2008, between OMERS Realty Corporation Marine Building Holdings Ltd., as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering a portion of the premises located at 355 Burrard Street, being Suites Numbered M100, MZ01 and BSMT, Vancouver, B.C., Canada.
7. Lease of Retail Space dated December 1, 2002, between Oxford Properties Group Inc., as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering a portion of the premises located at Edmonton City Centre West, being Unit #G310, Edmonton, Alberta, Canada, as extended by Lease Extension Agreement dated February 7, 2008, between

Oxford Properties Group Inc. and CPP Investment Board Real Estate Holdings, Inc., as Landlord and The Elephant & Castle Canada Inc., as Tenant.

8. Lease dated October 1, 2008, between Turbo-Mac Limited in Trust, as Landlord, and The Elephant & Castle Canada Inc., as Tenant, covering a portion of the premises located at 378 Yonge Street, Toronto, Ontario, Canada, as affected by Addendum to Lease dated June 17, 2008, by and between Turbo-Mac Limited "In Trust", as Landlord, and The Elephant & Castle Canada Inc., as Tenant, with a renewal rate of five (5) year commencing October 1, 2008, and ending September 30, 2013, registered as Instrument No. CA647866, against PIN 21103-0060.
9. Lease dated May 14, 2009, between Viking Rideau Corporation, as Landlord, and The Exchange Restaurant Group Limited, as Tenant, covering a portion of the premises located at the Rideau Centre Building, being Units 101/201, Ottawa, Ontario, Canada, as amended by Amendment Letter dated December 10, 2009, which changes the Tenant's name to The Elephant & Castle Canada Inc.

Schedule D**Claims to be deleted and expunged from title to Real Property**

Registration Nos.: OC1090065 and OC1091318 protecting claims set out in Ontario Superior Court of Justice, Court file number 10-48088 *Optimum Mechanical Solutions Inc. v. Viking Rideau Corporation and Terra Nova Pub Group o/a Ottawa Exchange Pub & Restaurant* being a construction lien claim in the amount of \$229,944.97 for work related to labour, materials and equipment for HVAC, electrical, plumbing and sprinkler requirements for the construction of a restaurant/pub at the Rideau Centre complex, registered against PIN 04116-0092 and PIN 04116-0005.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION WITH RESPECT TO THE COMPANIES LISTED ON SCHEDULE "A" HERETO (THE "CHAPTER 11 DEBTORS")

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

CONFIRMATION
APPROVAL AND VESTING ORDER

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MOTION RECORD
(RETURNABLE JANUARY 30, 2012)

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